



LINDA LINGLE
GOVERNOR

JAMES R. AONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

March 31, 2005

VIA FACSIMILE: 262-4088
Mr. Lawrence R. Bartley
217 Ohana Street
Kailua, Hawaii 96734

RE: Kailua Neighborhood Board

Dear Mr. Bartley:

This letter responds to your request for an opinion from the Office of Information Practices ("OIP") regarding actions taken by the Chairman of the Kailua Neighborhood Board ("Board") in appointing you to head an investigative committee related to a Board resolution calling for the City and County of Honolulu to enforce the zoning code with regard to properties being used as vacation rentals. You also sought OIP's opinion on whether members of the public could be excluded from participating in the investigative committee's actions.

In reviewing the information submitted by your letter of March 30, 2005 we note that reference is made to the formation of a public (permitted) interaction group ("PIG") "to look at the enforcement issues concerning illegal Bed and Breakfast/vacation rentals." We are unsure as to what the significance of the term "public (permitted) interaction group" as that term seems to be internally inconsistent. In most cases the purpose of a board forming a group under the permitted interaction provisions of section 92-2.5(b) is to be able to have interactions of board members which are not subject to the open meeting requirements of Chapter 92, HRS ("Sunshine Law").

It is our understanding that the general purpose of the PIG is to make findings and give recommendations to the Board regarding the Board's resolution calling for the enforcement of the zoning code with regard to Bed and Breakfast/vacation rentals in Kailua. Given this understanding, it is OIP's opinion

Mr. Lawrence R. Bartley
March 31, 2005
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that the Board should proceed pursuant to section 92-2.5(b), HRS, to form what is commonly referred to as an investigative committee. There are several requirements set forth in section 92-2.5(b) to the formation of an investigative committee. In reviewing the information submitted we do not believe that those requirements have been met and are of the opinion that the Board has not properly formed an investigative committee pursuant to section 92-2.5(b).

Pursuant to section 92-2.5(b), HRS, two or more members of a board (but less than a quorum of the board) may be assigned to investigate a matter relating to the business of the board. OIP interprets the language "may be assigned" to mean that it is not necessary that there be a vote of the Board to form the investigative committee. However, the action taken by the Board as reflected in the minutes of its March 3, 2005 meeting indicate several deficiencies in the Board's attempt to form an investigative committee.

Initially, it is noted that the members of the investigative committee, other than its chair, were not established by the Board at its March 3, 2005 meeting. OIP has opined that it is necessary for the members of an investigative committee to be identified by the Board at a regular meeting.

Second, it is noted that section 92-2.5(b)(A) requires that the scope of the investigation and the scope of committee's authority must be defined in a meeting of the Board. In reviewing the entry from the March 3, 2005 meeting, it is our opinion that the statement as to the purpose of the meeting does not sufficiently describe the committee's scope of authority.

In order to remedy this deficiency in forming an investigative committee pursuant to section 92-2.5(b), HRS, it is strongly recommended that the Board take up the matter at a meeting, properly noticing that the Board intends to form an investigative committee to address the enforcement of its resolution adopted at its February 3, 2005 meeting regarding Bed and Breakfast/vacation rentals. Furthermore, at that meeting, the Board should identify the members who will make up the investigative committee and specify the committee's purpose and the authority being granted to the committee.

Once properly formed, the investigative committee is required to comply with the provisions of sections 92-2.5(b)(B) and (C). Those provisions require, one, that all findings and recommendations of the investigative committee must be presented to the Board at a Board meeting, and, two, that any deliberation or decisionmaking regarding the matter investigated must occur at a duly noticed meeting of the Board, following the meeting of the Board at which the findings or recommendations of the investigative committee were presented to the Board.

Furthermore, upon the proper formation of an investigative committee, that committee is not subject to the open meeting requirements of the Sunshine Law, provided that it is acting in accordance with its stated purpose and authority.

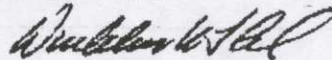
Mr. Lawrence R. Bartley
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Therefore, in response to your specific question regarding participation of the public in the investigative committee, the answer is that a properly formed investigative committee can conduct its investigation without providing public notice or access as would otherwise be required by the Sunshine Law.

In conclusion, we would strongly recommend that the Board remedy the apparent deficiencies in its attempted formation of a investigative committee pursuant to section 92-2.5(b), HRS, at the next available meeting. Upon bringing its actions into compliance with the requirements of section 92-2.5(b), HRS, the investigative committee would be properly empowered to conduct its intended activity.

Please do not hesitate to contact me if I may be of further assistance regarding this matter.

Very truly yours,



Winteh K. T. Park
Staff Attorney



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LESLIE H. KONDO
DIRECTOR

August 1, 2005

VIA FACSIMILE NO. (527-5760)

Ms. Lynne Matusow
Chair, Downtown Neighborhood Board No. 13
c/o Neighborhood Commission
City Hall, Room 400
Honolulu, Hawaii 96813

Re: Sunshine Law Issues
S RFO-G (05-039)

Dear Ms. Matusow:

On behalf of the Downtown Neighborhood Board No. 13 (the "Board"), you requested that we clarify two issues that have arisen during a recent meeting. We also received an oral opinion request from board member Carl Middleton, which we understand to be identical to the first issue raised in your letter. Accordingly, we are addressing both your and Mr. Middleton's requests by this letter.

We understand the two issues that you raise for our response to be as follows:

- (1) Whether, during the "public concerns" item on the agenda, board members may bring up for the Board's consideration issues that constituents have raised to them that are not on the agenda; and
- (2) For the purposes of amending the Board's agenda, how many people must be affected by the Board's action on a matter to be considered "a significant number of persons."

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August 1, 2005
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With respect to the first issue, we interpret the Sunshine Law to restrict the Board's discussions, deliberations and actions to those items listed on the Board's agenda.¹ In other words, the Board is not allowed to consider matters that are outside of its agenda. In our opinion, however, an individual board member, at his or her initiative or on behalf of a constituent, may raise a matter of "public concern" that is not specifically identified on the agenda during the "public concerns" portion of the meeting so long as the Board does not then proceed to discuss, deliberate or take action regarding that matter. We base our opinion on the fact that board members may generally speak to any item on the Board's agenda. We note, however, that the agenda item "public concerns" is not specific enough to allow the Board to consider any matter brought up by a member of the board or of the public during the consideration of that agenda item unless the agenda may be amended to include the item pursuant to section 92-7(d).² Therefore, if the Board wishes to consider such a matter raised by a board member and the agenda cannot be amended, it must put the matter on the agenda for a later meeting.

While we do not believe that the Sunshine Law prohibits board members from raising issues during the "public concerns" portion of the meeting, we recommend that board members be very cautious about doing so. In describing an issue, a board member must be careful not to discuss or argue the merits of an issue for which the agenda may not be amended. Although frustrating (and, at times, difficult), board members must refrain from discussing the matter because this discussion must generally occur as part of the Board's consideration of the matter at a subsequent meeting. We understand that, as the Board's chair, you have suggested to other board members that they ask to have the matters placed on the agenda rather than raising the matters during the "public concerns" portion of the meeting. We strongly believe that this the better way for board members to bring issues that are important to them and to their constituents before the Board for consideration.

With respect to your second question, the statute provides that a board may amend its agenda to include an item as long as the item is not of "reasonably major importance" and action by the board on the item will not "affect a significant number of persons." Haw. Rev. Stat. § 92-7(d) (Supp. 2004). Your question posed is "what constitutes a great number of people." The statute is purposefully broad in

¹ We remind the Board that the purpose of the agenda is to announce to members of the public what the Board intends to consider at the meeting in enough detail so that the public can make an informed decision on whether to participate in the meeting.

² As discussed below, if the Board wishes to immediately consider a matter raised during the "public concerns" portion of the meeting, the Board could amend its agenda to do so, assuming that two-thirds of the members voted to so amend the agenda, the item was not of reasonably major importance and the Board's action on the item would not affect a significant number of people. Haw. Rev. Stat. § 92-7(d) (Supp. 2004).

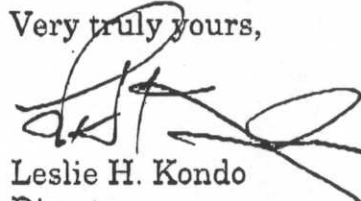
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its language because the question of when an item "affect[s] a significant number of persons" is a fact-specific one that can only be determined on a case-by-case basis.
Id.

In your example of the noise variance application that could possibly affect 1,500 to 2,000 people living in the vicinity, we would likely find that the Board's action on the application would "affect a significant number of persons." Accordingly, in that example, the Board likely would not be able to amend its agenda to include consideration of the application and would have to defer consideration of the issue until a subsequent meeting.

We trust that we have understood your questions and that this letter adequately responds to those questions. If you would like to discuss this matter further, please do not hesitate to contact us.

Very truly yours,



Leslie H. Kondo
Director

LHK:cy

cc: Mr. Carl Middleton (via facsimile no. 527-5760)
The Honorable Baybee Hifuna-Ablan (via facsimile no. 527-5760)



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LESLIE H. KONDO
DIRECTOR

September 13, 2005

VIA FACSIMILE NO. 527-5760

Ms. Baybee Hufana-Ablan
Executive Secretary
Neighborhood Commission
530 S. King Street, #400
Honolulu, Hawaii 96813

Re: Neighborhood Board Issues
S RFO-G 05-041

Dear Ms. Hufana-Ablan:

Thank you for meeting with me to discuss the concerns that recently have been raised to us by certain members of neighborhood boards. More specifically, we have received multiple complaints that a number of the new policies relating to the neighborhood boards and their meetings are contrary to the requirements of the open meetings law, part I of chapter 92, HRS (the "Sunshine Law"). This letter is intended to confirm our discussion of those issues and to address certain other issues that have been raised to us subsequent to our meeting. We are copying this letter to the chairs of the neighborhood boards for their and their respective boards' information.

Two Hour Time Limit For Neighborhood Assistants

We understand that you have implemented a policy limiting the amount of time that the neighborhood assistants (the "NA") will be present during neighborhood board meetings. It is our understanding that the NAs, who serve as the neighborhood boards' support staff, have been instructed to leave meetings after two hours, but the policy does not require a neighborhood board to recess or adjourn its meeting when the NA leaves. Based upon our understanding of the policy, we do

not believe that, on its face, the policy is contrary to or otherwise inconsistent with the requirements of the Sunshine Law. In our opinion, your decision to remove the NA after two hours is an internal matter.

We caution you, however, that the policy of limiting the time that the NA is present during a meeting should not have the effect of terminating the meeting or give the appearance that the meeting is adjourned. For instance, we understand that some NAs have removed the public address system and collected the board members' name plates before leaving. Removal of these meeting aids effectively denies the community the ability to participate in a meeting of more than a few people as it may prevent members of the public from hearing the board members' discussion or being heard by the board members. It also may cause community members to incorrectly assume that the meeting is adjourned and that the board is prohibited from further considering board business.

We also have been told that some boards, on their agendas, indicate a specific time that the meeting will adjourn. We assume that the scheduled adjournment corresponds with the time that the NA is expected to leave the meeting. However, if a board schedules a time at which it will adjourn, the board may be forced to continue the meeting to another reasonable date and time to complete its agenda. As discussed below, once the meeting is convened, every member of the public who wishes to do so must be allowed an opportunity to testify regarding any matter on the board's agenda. The board may not deny anybody the opportunity to testify simply to move the meeting along faster because it plans to adjourn the meeting at a specified time. Accordingly, unless the board defers its consideration of an agenda item, the board must either allow all those interested to testify about that agenda item, which could extend the meeting beyond the scheduled adjournment time, or continue the meeting to another reasonable date and time.

Meeting Minutes

Based on the questions coming to us, there may be some confusion regarding what information the neighborhood board meeting minutes must contain. The statute explicitly provides, in relevant part, that "the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants." Haw. Rev. Stat. § 92-9(a) (1993). It does not require that the minutes include a verbatim transcription of the discussion between board members or the testimony presented by members of the community. *Id.* At a minimum, the minutes must include: (1) the date, time and place of the meeting; (2) the names of the board members recorded as either present or absent; the substance of all matters proposed, discussed or decided, and a record, by individual member, of any vote taken; and (3) any information that a board member requests be included in the minutes. *Id.*

We have previously opined that “the primary purpose for keeping minutes is to reflect what the board did.” OIP Op. Ltr. No. 03-13 at 6 (emphasis added). Accordingly, “it is sufficient for the minutes to describe, in very general terms, the positions expressed by” persons who are not board members. Id. That said, however, it is insufficient for the minutes to reflect only the testifiers’ names and associations. It is also insufficient for the minutes to summarize the oral testimony without reflecting the names of the testifiers associated with a particular position.

We have received complaints that you have eliminated the prior practice of providing copies of the draft form of the minutes to the neighborhood board chairs and vice chairs prior to the neighborhood board meeting at which those minutes are to be approved. We understand that the practice was intended to allow the neighborhood board chairs and vice chairs to correct the draft minutes before the minutes were offered to the neighborhood board for approval. The process by which boards review and approve minutes of prior meetings is not dictated or otherwise controlled by the Sunshine Law. The Sunshine Law, in fact, does not require the minutes of prior meetings to be approved by a board before being made publicly available. Rather, as stated above, the statute simply requires that the minutes be “a true reflection of the matters discussed at the meeting and the views of the participants.” Haw. Rev. Stat. § 92-9(a). Therefore, assuming that the minutes are being made available to the public within 30 days after each meeting as required by the Sunshine Law, your decision not to provide the minutes to the chairs and vice chairs prior to the meeting is an internal procedure and, based upon our understanding of the complaints, does not implicate the Sunshine Law.

We also understand that boards frequently amend the minutes of an earlier meeting and that those revisions are reflected in the minutes of the meeting at which the revisions are approved. In other words, it is our understanding that the draft form of the minutes is not revised to reflect the changes to the minutes adopted by the board. It is our opinion, however, that, because the statute requires that the minutes be “a true reflection of the matters discussed at the meeting and the views of the participants,” the board’s revisions must be reflected in the minutes being revised either by creating an amended version of the minutes or by attaching an addendum to the minutes that specifically describe the revisions.

Agendas

The Sunshine Law requires a board to file, along with its public notice of any meeting, an agenda that lists all of the items that the board intends to consider at its meeting. Haw. Rev. Stat. § 92-7 (Supp. 2004). In light of the statute’s purpose, i.e., to open up the governmental processes to public scrutiny and participation, we interpret the statute to require that the agenda be sufficiently detailed to allow

members of the community to understand what the board intends to consider so that they can reasonably decide whether to participate in the meeting. Accordingly, agenda items such as "Rule Revisions" or "Resolution - drainage," without any further detail about the specific rules to be revised or the specific resolution, are insufficient.

Public Testimony

The Sunshine Law requires boards to accept all written testimony and allow all interested persons the opportunity to offer oral testimony regarding any matter on the board's agenda.

The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford **all interested persons** an opportunity to present oral testimony on any agenda item.

Haw. Rev. Stat. § 92-3 (1993) (emphasis added).

Accordingly, a board cannot deny community members the opportunity to orally testify regarding an item on its meeting agenda. A neighborhood board's agenda should not, therefore, contain statements indicating that the board will entertain community comments about only particular agenda items because limiting public testimony to particular items are contrary to the statutory requirement that oral testimony must be allowed with respect to any item on the board's agenda and, therefore, should be removed. Similarly, in our opinion, a board cannot "call for the question" where such action effectively denies any person the opportunity to testify regarding that particular agenda item prior to the board's decision on the matter.

A board also cannot require persons who are interested in testifying orally to register or sign-in, although the board may request that people do so. If the board does request that persons interested in testifying register or sign-in, it cannot refuse to allow a person to testimony based on the person's failure to register or sign in. In our opinion, limiting oral testimony to those who have signed in or registered beforehand conflicts with the Sunshine Law's requirement that "all interested persons" be given the opportunity to present oral testimony at a board's public meeting. See OIP Op. Ltr. No. 02-02 at 5-6 ("to disallow testimony from anyone who has not signed up by a specific time would be contrary to a basic policy of the Sunshine Law").

Also, for your information, we have opined that “boards may not require potential testifiers to identify themselves prior to submitting oral or written testimony and cannot refuse to accept written or oral testimony from a member of the public who chooses not to identify himself or herself.” OIP Op. Ltr. No. 04-09 at 3. Thus, while a board may ask persons wishing to present oral testimony to identify themselves, either by signing in or by orally stating their names and associations when they testify, the Sunshine Law does not permit the board to require such identification as a condition to presenting oral testimony.

Communication Between Board Members Outside of Meetings

Unless a permitted interaction or other exception applies, board members can only communicate about board business, i.e., matters that the board is considering or is reasonably likely to consider in the foreseeable future, at a properly noticed meeting. See Haw. Rev. Stat. § 92-2.5 (Supp. 2004). Therefore, board members cannot discuss board business through e-mail, telephone, or other means.

Because it limits board members’ ability to discuss board business outside a properly noticed board meeting, the Sunshine Law places restrictions on the ability of board members to attend non-board meetings where board business will be discussed, at least to the extent that several of them seek to do so at once. The law’s restrictions on a board member’s absolute freedom of speech relating to board business result from the fact that the board members are elected officials, and thus the restrictions are constitutionally permissible. OIP Op. Ltr. No. 01-01 at 28-29.

Such statements as “I am here as a private citizen” or “speaking in my individual capacity” do not provide an exclusion from the Sunshine Law’s requirements so as to allow board members to participate in private meetings at which board business is discussed. A board member cannot remove his board member “hat,” notwithstanding his or her stated intent to do so; the question is whether the board member is discussing board business with other board members. See OIP Op. Ltr. No. 01-01 at 25-34 (discussion of the Sunshine Law’s restrictions on Neighborhood Board members’ attendance of Vision Team meetings).

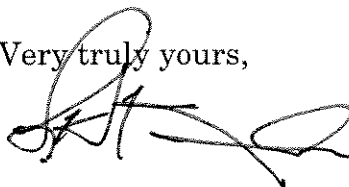
Committee of the Whole

It has come to our attention that certain neighborhood boards have created a “Committee of the Whole” and, in some cases, other committees comprising all or a portion of the board members. While the Sunshine Law does not prevent boards from forming committees, the neighborhood board members must be aware that any committee of their respective boards is itself subject to the requirements of the Sunshine Law, including filing public notice of any meetings with an agenda

detailing the matters that the committee intends to consider, accepting public testimony, and keeping minutes of the meeting.

I trust that the above confirms the matters that we discussed and addresses other questions raised to us by various members of neighborhood boards. By copy of this letter to Mr. William E. Woods, we are advising him that this letter closes the file that had been opened in response to his questions to us. If you have questions, please do not hesitate to contact us.

Very truly yours,



Leslie H. Kondo
Director

LHK:cy

cc: Jennifer D. Waihee, Esq. (via facsimile 523-4583)
Mr. William E. Woods (via e-mail)
Mr. Lester Muraoka (via e-mail)
Mr. Robert Chuck (via e-mail)
Mr. Lester Fukuda (via e-mail)
Mr. Mike Abe (via e-mail)
Ms. Karen Ah Mai (via e-mail)
Ms. Darlene Nakayama (via e-mail)
Ms. Nadine Nishioka (via e-mail)
Mr. Ron Lockwood (via e-mail)
Mr. Robert Finley (via e-mail)
Mr. John Steelquist (via e-mail)
Mr. John Breinich (via e-mail)
Mr. Al Canopin (via e-mail)
Ms. Lynne Matusow (via facsimile 527-5760)
Ms. Sesnita Moepono (via e-mail)
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LESLIE H. KONDO
DIRECTOR

September 15, 2005

VIA E-MAIL

Mr. Lawrence R. Bartley,
Vice Chair
Kailua Neighborhood Board #31

Re: Adjournment of Meetings

Dear Mr. Bartley:

Thank you for your letter dated September 13, 2005.

The manner in which a board adjourns its meeting is not dictated by the Sunshine Law, part I of chapter 92, HRS. Notwithstanding the Neighborhood Plan, however, the board cannot adjourn its meeting before allowing every interested person the opportunity to present oral testimony relating to an item on the board's agenda. Haw. Rev. Stat. § 92-3 (1993).

Moreover, contrary to section 4-8.3 of the Neighborhood Plan, as quoted in your letter, if the number of board members present at any time during the meeting is less than the number of members necessary to constitute a quorum, the board cannot continue discussing, deliberating or deciding any business. The term "meeting" requires a quorum of the board to be present. See Haw. Rev. Stat. § 92-2(3) (1993). In other words, once the number of board members present is less than the number of members necessary to constitute a quorum, there cannot be a "meeting." It would be contrary to and in violation of the Sunshine Law for board members to discuss, deliberate or decide any business outside of a meeting absent a permitted interaction or some other applicable exception.

Mr. Bartley
September 15, 2005
Page 2

Assuming that your quotations of the Neighborhood Plan are accurate, we believe that the Neighborhood Plan should be revised to be consistent with the statute. By copy of this letter to Ms. Baybee Hufana-Ablan, we are advising her of our opinion with respect to the portions of the Neighborhood Plan that you quoted.

Very truly yours,

A handwritten signature in black ink, appearing to be 'L. Kondo', written over a horizontal line.

Leslie H. Kondo
Director

cc: Ms. Baybee Hufana-Ablan (via facsimile 527-5760)
Ms. Kathy Bryant-Hunter (via e-mail)
Jennifer D. Waihee, Esq. (via facsimile 523-4583)



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LESLIE H. KONDO
DIRECTOR

October 3, 2005

VIA EMAIL: nco@honolulu.gov

Ms. Baybee Hufana-Ablan
Neighborhood Commission Office
530 S. King Street, #400
Honolulu, Hawaii 96813

Re: Executive Committee Meeting

Dear Ms. Hufana-Ablan:

This letter is intended to confirm the oral guidance provided to you in response to your letter dated September 28, 2005. You provided us with pages 4 and 5 of the agenda filed by the Kailua Neighborhood Board (the "Board"). Although the header states "Kailua Neighborhood Board No. 31, Regular Meeting Agenda," the pages that were provided to us appear to be the agendas for various committees of the Board. Your question related to the meeting location for the meeting of the Executive Committee. More specifically, we understood you to be questioning whether the Executive Committee could convene its meeting at Agnes Bakery.

The Sunshine Law requires that meetings of the Board, as well as its committees, be open to the public. Haw. Rev. Stat. § 92-3 (1993). We interpret that to mean that the public must be able to participate in the meeting -- i.e., to see and hear the board members' discussions and to testify on matters that are on the agenda. Therefore, as long as the public can participate in the Executive Committee's meeting at Agnes Bakery, we have no objection to the meeting location; however, should Agnes Bakery be unable to reasonably accommodate the members of the public wishing to participate in the meeting, the Executive Committee must convene its meeting at a location that is able to accommodate all of the people.

While we find no issue with respect to the meeting location, we note that many portions of the various committees' agendas do not contain the level of detail required by the statute. We have repeatedly explained that the matters that the Board (or, in this case, committee) intends to consider must be described in the agenda with sufficient detail so that the public can understand the specific matter that will be considered. If the public cannot reasonably determine from the agenda what the Board intends to consider at the meeting, the public cannot reasonably decide whether to participate in the meeting, either by attending the meeting or submitting testimony relating to the matter. In such case, the agenda would not contain the level of detail as we believe is required by the statute.

With respect to the pages provided to us, regarding the agenda for the Government & Community Services Committee, agenda items such as "Homelessness in Kailua" and "Charter Commission Amendments" should be described in more detail. For instance, the specific issue relating to "Homelessness in Kailua" that the Committee intends to consider should be stated. Similarly, the specific Charter amendments (or types of Charter amendments) must be identified on the agenda (the description such as that for the Special Board Meeting is sufficient: "Proposed Charter Amendments relating to Neighborhood Board System"). The item identified as "Boat Ramp" on the agenda for the Parks & Recreation Committee is likewise insufficient.

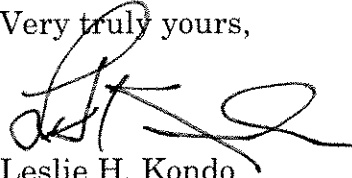
With the exception of the agenda for the Executive Committee, all of the agendas contain an item described as: "Issues referred to committee from October 6, 2005 meeting, if any." While we understand that the committees meet after the Board's meeting and the committees' agendas are intended to include any matter referred to that particular committee by the Board, the present form of the agenda item lacks the necessary detail. Clearly, a member of the public cannot determine the specific matter that the committees intend to consider under that agenda item. The committees' agendas must specifically identify the matter referred to the committee which the committee intends to consider during its meeting. To satisfy that requirement, the committees may have to file their respective agendas after the Board meeting at which the matter or matters are referred to the committees. We note that, given that the committee meetings will be held on October 15, 18 and 19, there appears to be sufficient time after the Board's meeting on October 6 in which to file the agendas for the meetings of the various committees reflecting the specific matter or matters referred for the committee's consideration.

Given that the meetings reflected in the agendas have not occurred, it is our opinion that the agendas should be amended and re-filed to reflect our above comments. In light of our opinion about the lack of detail relating to certain agenda items, if the agendas are not amended, we do not believe that it would be appropriate for the committees to consider those items.

Ms. Baybee Hufana-Ablan
October 3, 2005
Page 3

Should you have any questions, please feel free to contact us.

Very truly yours,



Leslie H. Kondo
Director

LHK:cy

cc: Jennifer D. Waihee, Esq. (via facsimile 523-4583)
Mr. William E. Woods (via e-mail)
Mr. Lester Muraoka (via e-mail)
Mr. Robert Chuck (via e-mail)
Mr. Lester Fukuda (via e-mail)
Mr. Mike Abe (via e-mail)
Ms. Karen Ah Mai (via e-mail)
Ms. Darlene Nakayama (via e-mail)
Ms. Nadine Nishioka (via e-mail)
Mr. Ron Lockwood (via e-mail)
Mr. Robert Finley (via e-mail)
Mr. John Steelquist (via e-mail)
Mr. John Breinich (via e-mail)
Mr. Al Canopin (via e-mail)
Ms. Lynne Matusow (via e-mail)
Ms. Sesnita Moepono (via e-mail)
Ms. Bernadette Young (via e-mail)
Mr. Grant Tanimoto (via e-mail)
Mr. William B. Clark (via e-mail)
Mr. Albert Fukushima (via e-mail)
Mr. C.O. "Andy" Anderson (via e-mail)
Mr. L. Gary Bautista (via e-mail)
Ms. Cynthia K.L. Rezentes (via e-mail)
Mr. Dick Poirier (via e-mail)
Mr. Ben Acohido (via e-mail)
Ms. Kathleen Pahinui (via e-mail)
Ms. Deedee Letts (via e-mail)
Mr. George Okuda (via e-mail)
Mr. Larry Zdvoracek (via e-mail)
Ms. Kathy Bryant-Hunter (via e-mail)
Mr. Wilson K. Ho (via e-mail)
Ms. Maeda Timson (via e-mail)
Ms. Melissa Graffigna (via e-mail)



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

October 19, 2005

VIA FACSIMILE NO. 527-5760
AND EMAIL: nco@honolulu.gov

Mr. Jon Chinen
Chairperson
Kailua Neighborhood Board No. 31
P.O. Box 487
Kailua, Hawaii 96734

Re: Your Letter Dated October 15, 2005

Dear Mr. Chinen:

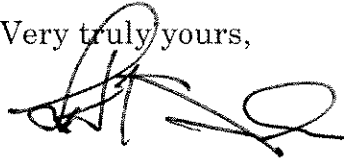
Thank you for your letter dated October 15, 2005.

You ask that we clarify a certain statement in our letter to Ms. Baybee Hufana-Ablan dated September 13, 2005. Specifically, you question our statement that Neighborhood Board members are "elected officials." You apparently believe that Neighborhood Board members are "elected residents," not "elected officials." While we do understand your belief that there is a distinction between the terms as they relate to Neighborhood Board members, that issue is immaterial to the point being conveyed to Ms. Hufana-Ablan in our letter. Whether or not Neighborhood Board members are "elected officials" or "elected residents," as conveyed in our letter to Ms. Hufana-Ablan, it is our opinion that the Sunshine Law does not allow members to communicate about Neighborhood Board business outside of a properly noticed meeting absent a permitted interaction that allows members to do so.

Mr. Jon Chinen
October 19, 2005
Page 2

Your question about the Neighborhood Boards' function is beyond our authority. We suggest that you consult with your attorney or the Department of the Corporation Counsel for an answer to that question.

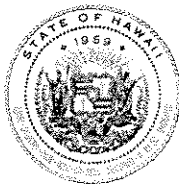
Very truly yours,

A handwritten signature in black ink, appearing to be 'LH Kondo', written over the typed name.

Leslie H. Kondo
Director

LHK:cy

cc: The Honorable Baybee Hufana-Ablan (via e-mail)
Jennifer D. Waihee, Esq. (via facsimile 523-4583)



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

November 1, 2005

VIA E-MAIL

Ms. Lynne Matusow

Re: Neighborhood Commission Meeting, October 11, 2005

Dear Ms. Matusow:

We are in receipt of your letter dated October 12, 2005, questioning whether the agenda filed by the Neighborhood Commission (the "Commission") for its October 11, 2005 meeting complied with the Sunshine Law's requirements. More specifically, the agenda described the items at issue as follows:

5. FOR ACTION

* * *

- 5.3 Policy for Public Testimony Time Limit
- 5.4 Commission Meeting Date
- 5.5 Committee Organization

As recited in your letter, the purpose of the agenda is to provide the public with notice as to the matters that the Commission intends to consider at its meeting. That means that the agenda must be sufficiently descriptive so that the public can reasonably understand the specific matter to be considered.

In this case, while the agenda could have been more descriptive, we believe that agenda items 5.3 and 5.4, "Policy for Public Testimony Time Limit" and "Commission Meeting Date," respectively, provided reasonable notice as to the matters that the Commission intended to consider. We agree that, if the

Ms. Lynne Matusow
November 1, 2005
Page 2

Commission had considered a policy concerning public testimony before Neighborhood Boards, the agenda item was insufficient; however, it is our understanding that, under agenda item 5.3, the Commission considered a policy concerning the length of time that a member of public can testify at a Commission meeting, which we believe is consistent with the agenda. Likewise, "Commission Meeting Date" provides sufficient notice that the Commission intended to consider an issue relating to the date of its meetings, which, from your letter, it did.

Your letter reflects that the Committee deferred its consideration of agenda item 5.5, "Committee Organization." By copy of this letter to Ms. Baybee Hufana-Ablan, Executive Secretary of the Neighborhood Commission, we recommend that, if the item is placed on a future agenda for the Commission's consideration, it be described with more detail.

We are closing our file that was opened in response to your letter. Should you have any questions, please do not hesitate to contact us.

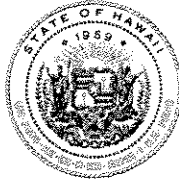
Very truly yours,

A handwritten signature in black ink, appearing to be "LHK", with a stylized flourish at the end.

Leslie H. Kondo
Director

LHK:cy

cc: The Honorable Baybee Hufana-Ablan (via e-mail)



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

November 2, 2005

VIA E-MAIL

Ms. Melissa Graffigna, Chair
Mililani Mauka/Laulani Valley
Neighborhood Board No. 35

Re: Various Sunshine Law Issues

Dear Ms. Graffigna:

We are in receipt of your letter dated October 17, 2005. Your letter presents no facts or other information to justify any modification of our opinion contained in our letter to you dated August 16, 2005. We do, however, offer the following in response to your complaints and allegations.

First, you question why this office did not refer the complaint about your neighborhood board to the Neighborhood Commission. It is our statutory responsibility, not the Neighborhood Commission's, to receive and, where appropriate, address questions and complaints concerning whether a board's actions are consistent with the open meetings law, part I of chapter 92, HRS (the "Sunshine Law"). Haw. Rev. Stat. §§ 92-1.5, 92F-42(18) (Supp. 2004). Notwithstanding what may be contained in the Neighborhood Plan, Neighborhood Boards are subject to, and thus required to comply with, the Sunshine Law.

Second, your complaint about the fact that our letter was based upon an anonymous complaint¹ is equally misplaced. In performing our role of receiving and resolving complaints and advising boards about compliance with the Sunshine Law, the identity of the person who files a complaint with this office regarding a potential Sunshine Law violation is irrelevant. Further, nothing in the Sunshine Law gives board members the "right" to "know his or her accuser." If you believed that any of

¹ In our August 16 letter, we characterized the complaint as being anonymous. More accurately, the complainant requested that his or her identity be kept confidential.

the information provided to us and upon which we based our letter to you was untrue or otherwise incorrect, you should have addressed those matters rather than questioning the manner in which we received the information.

Third, although we respect your right to disagree with our interpretation, the statute charges this office with the duty of administering and interpreting the Sunshine Law. Haw. Rev. Stat. §§ 92-1.5, 92F-42(18) (Supp. 2004). Accordingly, we do not believe that a board has any discretion to take action or to operate in a manner that is inconsistent with or contrary to our interpretation of the statute.

Fourth, with respect to e-mail communication, the Sunshine Law expressly prohibits board members from using "electronic communication," which includes e-mail, to circumvent the spirit or requirements of the statute. Haw. Rev. Stat. § 92-5(b) (Supp. 2004). That same section also forbids board members from using the permitted interactions found in section 92-2.5, HRS, to get around the statute's requirements. *Id.* Accordingly, contrary to your unsupported belief, you cannot communicate by e-mail with more than one other board member about business that is before your board. *See* Haw. Rev. Stat. § 92-2.5(a) (Supp. 2004). This means that you cannot copy other board members on your e-mail. Although you may not believe that you are "discussing" the matter with the other board members, it is our opinion that, absent an explicit exception, the statute requires board members to communicate their positions on a matter before the board to each other at a properly noticed meeting open to the public.

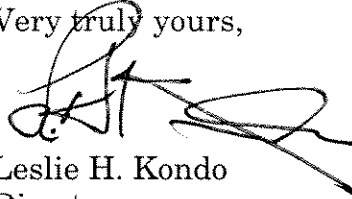
Lastly, your questioning of the source of our comment that the Committee of the Whole must comply with the Sunshine Law simply misses the point: The point is that the Committee cannot change the starting time of its meeting by e-mails exchanged between Committee members **the day before** the scheduled meeting. The statute clearly requires the Committee's notice, which must include the time of the meeting, to be filed with the Office of the City Clerk **at least six days prior to the meeting**. Haw. Rev. Stat. § 92-7(a) (Supp. 2004). To change the time of a meeting for which a notice has already been filed, the Committee must file an amended or new notice at least six days prior to the date of the meeting.

Although it may make doing business less efficient and at times more difficult, the Sunshine Law is designed to protect the public's right to know and to participate in the discussions, deliberations, decisions, and actions by which government boards form and conduct public policy. *See* Haw. Rev. Stat. § 92-1 (1993). In accordance with this purpose, the statute directs that a board's business be conducted as openly as possible and that its provisions be strictly construed against meetings closed to the public.

Ms. Melissa Graffigna, Chair
November 2, 2005
Page 3

If you or any other members of your neighborhood board have questions concerning the Sunshine Law, please feel free to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to be 'LH Kondo', with a long horizontal stroke extending to the right.

Leslie H. Kondo
Director

LHK:cy

cc: The Honorable Baybee Hufana-Ablan (via e-mail)
Neighborhood Board Chairs,
c/o the Neighborhood Commission (via e-mail)
Members, Mililani Mauka/Laulani Valley Neighborhood Board No. 35.
c/o the Neighborhood Commission (via e-mail)



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

November 15, 2005

VIA E-MAIL: nco@honolulu.gov

Ms. Baybee Hufana-Ablan
Executive Secretary
Neighborhood Commission
City and County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

Re: Request for Opinion (S RFO-G 05-055)

Dear Ms. Hufana-Ablan:

The Office of Information Practices ("OIP") has opened the above-referenced file relating to your request for an advisory opinion regarding the Hawaii Kai Neighborhood Board under the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes.

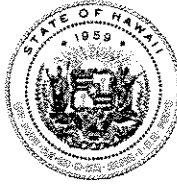
We will contact your office if we require any additional documentation or need to review the record(s) at issue to provide the opinion requested. Should you have any questions concerning the status of your request, please do not hesitate to contact our office at 586-1400.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leslie H. Kondo", written over a horizontal line.

Leslie H. Kondo
Director

LHK: nkb



LINDA LINGLE
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LESLIE H. KONDO
DIRECTOR

November 29, 2005

VIA E-MAIL: lemuraok@ksbe.edu

Mr. Lester Muraoka
Chair, Neighborhood Board #1
(Hawaii Kai)

Re: Sunshine Law

Dear Mr. Muraoka:

By e-mail and by telephone on November 22, 2005, you inquired as to whether, under part I of chapter 92, Hawaii Revised Statutes ("HRS"), also known as the Sunshine Law, more than two members of Neighborhood Board #1 ("Board") may attend a non-profit organization's meeting at which official business of the Board will be discussed if the Board publishes and distributes an agenda of the organization's meeting at least six days beforehand. See OIP Op. Ltr. No. 01-01 ("official business" refers to those discrete proposals or issues that are actually pending before the board or that are reasonably likely to be considered by the board in the foreseeable future). I understand that you are seeking this informal advisory opinion from the Office of Information Practices ("OIP") in order to refer to it and distribute it at the next Board meeting on November 29, 2005.

The Sunshine Law is intended to open up the governmental processes to public scrutiny and participation by requiring that board members discuss, deliberate and decide official business as openly as possible. Haw. Rev. Stat. § 92-1 (1993). In light of the express legislative policy, OIP has interpreted the Sunshine Law to require that board members discuss, deliberate and decide official business in a properly noticed meeting, unless the statute specifically allows otherwise. The Sunshine Law sets forth specific

circumstances, called permitted interactions, when members of a board are allowed to discuss official business outside of a meeting. Haw. Rev. Stat. § 92-2.5 (Supp. 2004). As listed in section 92-2.5, HRS, there is no permitted interaction that addresses the situation that you have described. Therefore, the Board's members cannot participate in the non-profit organization's meeting at which the Board's official business will be discussed (or that portion of the non-profit organization's meeting), even if the Board were to publish and distribute the non-profit organization's meeting agenda. For your information, I am attaching an informal advisory opinion dated September 8, 2005, to Karen Ah Mai, Chair, Neighborhood Board #5, addressing in greater detail the issue of Neighborhood Board members attending another organization's meeting.

As we discussed in our telephone conversation, the Sunshine Law does allow, as a permitted interaction, more than two members of a board, but less than a quorum, to investigate a matter concerning official business, so long as the board complies with the following requirements:

- (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:
 - (1) Investigate a matter relating to the official business of their board; provided that:
 - (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and

Mr. Lester Muraoka
November 29, 2005
Page 3

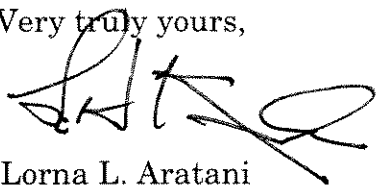
recommendations of the investigation
were presented to the board[.]

Haw. Rev. Stat. § 92-2.5(b) (Supp. 2004).

This permitted interaction may allow certain members of the Board, i.e., less than a quorum, to participate in the non-profit organization's meeting, including discussing official business. As evident from the statute, however, this permitted interaction requires that the Board members be assigned and the scope of their investigation be defined by the Board at a properly noticed meeting. It would be contrary to the Sunshine Law for members of the Board who were not assigned to investigate the matter to also participate in the investigation by, for instance, attending the non-profit organization's meeting at which official business is discussed. You should also be aware that the members assigned to investigate the specific matter must report their findings and recommendations at a meeting of the Board, and any deliberation or decision of the Board on the findings and recommendations must occur at a meeting subsequent to the reporting.

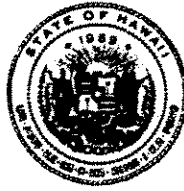
I trust that this letter adequately responds to your inquiry. Please do not hesitate to contact our office if you have any additional questions or require further assistance.

Very truly yours,


for Lorna L. Aratani
Staff Attorney

Enclosure

cc: The Honorable Baybee Hufana-Ablan (via e-mail) (w/ enclosure)



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

September 8, 2005

VIA FACSIMILE NO. 732-7239
AND E-MAIL (ahmai@hawaii.rr.com)

Ms. Karen Ah Mai
Chair, Neighborhood Board No. 5
(Diamond Head-Kapahulu-St. Louis)

Re: Request for Opinion (RFO-G 05-050)

Dear Ms. Ah Mai:

You requested an opinion from the Office of Information Practices ("OIP") on whether various actions by board members would violate the Sunshine Law, part I of chapter 92, Hawaii Revised. To provide you with a response by September 8, as you requested, this opinion is based on the facts and other information stated in your letter of August 22, 2005. OIP has not independently investigated the facts or received comments from other members of the Diamond Head-Kapahulu-St. Louis Neighborhood Board (the "Board").

According to your letter, the agenda filed on August 4, 2005 for the Board's August 11, 2005 meeting included as an agenda item an issue relating to the planned Safeway development.¹ At its August 11 meeting, the Board passed a motion to support the Safeway development, with Safeway to report back to the Board after its plans had been submitted to the Department of Planning and Permitting. Prior to and after the August 11 meeting, board members attended several non-Board meetings at which the Safeway development was discussed, thus raising the Sunshine Law concerns you have presented to OIP. We will address each of the meetings and the issues that you raised relating to the particular meeting separately.

¹ We note that the item was listed on the Board's agenda under the heading "Unfinished Business." We, therefore, presume that the board members had considered the issue previously and likely knew that they would consider the issue again in a future meeting.

The August 9 meeting

On August 9, you indicate that the Chair, the Vice Chair, and another board member were invited to attend a meeting that same day involving the developer, an affected private party, and a private traffic engineer regarding certain traffic issues relating to the Safeway development. The Vice Chair attended the meeting. Two other board members showed up during the meeting. Thus, at some point in the meeting, three board members were present. Based upon your letter, we assume that the issues discussed at the private meeting were related to the Board's agenda item relating to the Safeway development.

You asked whether the three board members' participation in the private meeting violated the Sunshine Law. Since no permitted interaction applied to the meeting and the three board members discussed Board business (i.e., matters that the board is considering or is reasonably likely to consider in the foreseeable future), the board members' participation in a meeting of the sort that you describe violated the Sunshine Law. See Haw. Rev. Stat. §§ 92-3 (1993) (meetings required to be open) and 92-2.5 (Supp. 2004) (permitted interactions). The board members might have been able to participate in the private meeting if the Board had created a task force to, for instance, investigate the traffic issues relating to the Safeway development, designating those board members at a Board meeting. See Haw. Rev. Stat. § 92-2.5(b) (Supp. 2004).

You also asked whether the Vice Chair and the other Board members were "within their rights" to attend this meeting as representatives of the Board. However, the question of which Board member was authorized to represent the Board is not a Sunshine Law issue, and thus is outside OIP's jurisdiction. We note that, unless the Board has designated the board members to present its position at the private meeting, more than two board members could not discuss the issue during the private meeting.²

Finally, you asked whether such statements as "I am here as a private citizen" or "speaking in my individual capacity" provide an exclusion from the Sunshine Law's requirements and allow board members to participate in private meetings at which Board Business is discussed. A board member cannot remove his board member "hat," notwithstanding his or her stated intent to do so; the question is whether the board member is discussing board business with other board members. See OIP Op. Ltr. No. 01-01 at 25-34 (discussion of the Sunshine Law's restrictions on Neighborhood Board members' attendance of Vision Team meetings). Such discussions must occur as part of a properly noticed board meeting unless a

² The Sunshine Law does, however, allow a board to authorize a group of members (less than a quorum) to present a position adopted by the board at a non-board meeting as a permitted interaction. Haw. Rev. Stat. § 92-2.5(b)(2) (Supp. 2004). The question of whether a group of board members had been properly authorized under this permitted interaction would be a Sunshine Law question, and thus within OIP's jurisdiction.

statutory exception or permitted interaction allows the board members to discuss the matter outside of a meeting.

The August 10 meeting

On August 10, Safeway held a community meeting on the Safeway development and invited interested persons to attend. Seven of the fifteen Board members attended. Three of them said nothing during the meeting and were not near other Board members; two Board members sat next to each other and spoke during the meeting; another Board member sat near those two but did not speak; and another Board member came late and spoke during the meeting.

You asked whether the members were generally "within their rights" to attend the meeting. Again, as discussed above, where Board Business is discussed, more than two board members generally cannot participate in that meeting. The Sunshine Law places restrictions on the ability of board members to attend non-Board meetings to the extent that several of them seek to do so, but the Sunshine Law does not address the question of which particular members are best qualified to represent the Board or which members should leave when several members show up at a meeting where Board Business will be discussed.

You asked whether those Board members who attended, but did not speak, violated the Sunshine Law. The Board members, whether they spoke or not, should have left the meeting once they realized that more than one other Board member was present and that Board Business would be discussed by other Board members. By remaining to listen to the other Board members, they were part of a Board discussion, even though they themselves remained silent. Thus, the Board members who participated in the community meeting by listening to the other Board members in the circumstances you described violated the Sunshine Law.

You asked whether the Board members who spoke at the meeting violated the Sunshine Law or whether the Board members had a right to speak on the Safeway development issue at the community meeting. As noted above, more than two Board members could not have participated in the community meeting without violating the Sunshine Law. Accordingly, under the circumstance that you describe, speaking at a community meeting violated the Sunshine Law as those remarks should have been part of the Board's discussion of the issue at a properly noticed meeting. No permitted interaction applied, i.e., the Board members had not been authorized at a previous Board meeting to present a Board position. See Haw. Rev. Stat. § 92-2.5(b)(2) (supp. 2004). The restrictions place by the Sunshine Law on a board member's absolute freedom of speech relating to Board Business result from the fact that the board members are elected officials, and thus the restrictions are constitutionally permissible. OIP Op. Ltr. No. 01-01 at 28-29. As previously noted, board members cannot avoid these restrictions by such statements as "I am here as a private citizen;" they remain board members.

The August 16 meeting

Two Board members attended the meeting of a private association where the Safeway development issue was discussed. At the meeting, one Board member presented a resolution regarding the Safeway development, and another member spoke on the issue.

You asked whether board members attending private association meetings have the right to express their views on Board Business without violating the Sunshine Law. Again, as discussed above and in OIP Opinion Letter Number 01-01 at pages 28-29, board members are elected officials and are thus subject to restrictions on their absolute freedom of speech regarding Board Business. While two members may privately discuss Board Business, neither member may make or seek a commitment to vote. Act 84, 23rd Leg., 2005 Rg. Sess. In the case you describe, one member apparently made or sought a commitment to vote a certain way on the Safeway development by presenting at the association meeting a "resolution" regarding the issue. Thus, in the situation you described, the board members' discussion does not appear to be permitted under the Sunshine Law because at least one board member made and sought a commitment to vote a certain way on the Safeway development issue.

Penalties

You asked generally whether the Board was liable, or whether individual Board members would be liable, for Sunshine Law violations. Under section 92-13, Hawaii Revised Statutes, individual board members may be criminally liable for willful violation of the Sunshine Law and, if convicted, may be summarily removed from the board. However, violations could affect the entire Board in the sense that a person could sue to either void an action taken by the Board or to enjoin the entire Board from future violations of the Sunshine Law. Haw. Rev. Stat. §§ 92-11 and -12 (1993). Finally, you asked whether the fact that the Board members whose actions you described had been recently trained in the Sunshine Law's requirements would mean that the violations were willful (and thus could be criminally prosecuted.) The power to bring a criminal prosecution under the Sunshine Law lies with the Department of the Attorney General and the Office of the Prosecuting Attorney. Thus, we suggest that your question as to what constitutes a willful violation of the statute is better addressed to either of those agencies.

Conclusion

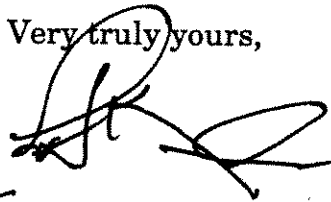

Based on the facts you presented to OIP in your letter of August 22, Board members' discussion of Board Business at several non-Board meetings violated the Sunshine Law. We strongly recommend that Board members be aware that they remain Board members even when not attending Board meetings, and that they cannot temporarily avoid the Sunshine Law's requirements by announcing that

Ms. Karen Ah Mai
September 8, 2005
Page 5

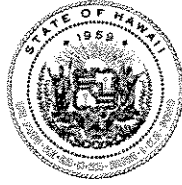
they are speaking as private citizens or in their individual capacity. As Board members, they must not engage in discussions of Board Business at non-Board meetings unless they are either the only Board member present, or unless a permitted interaction applies to the situation.

If you or any of the Board members have further questions about this matter, please do not hesitate to call OIP. OIP will close this file with this letter.

Very truly yours,


 Jennifer Z. Brooks
Staff Attorney

JZB: nkb



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.hawaii.gov/oiip

LESLIE H. KONDO
DIRECTOR

November 30, 2005

VIA E-MAIL: nco@honolulu.gov

Mr. Al Canopin, Chair
Nu`uanu/Punchbowl Neighborhood Board No. 12
c/o Neighborhood Commission
530 South King Street, Room 400
Honolulu, Hawaii 96813

Re: Compliance with the Sunshine Law

Dear Mr. Canopin:

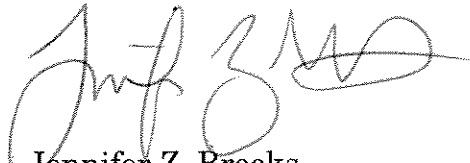
The Office of Information Practices ("OIP") recently received a request from Michael A. Lilly, Esq., for an opinion regarding whether the Nu`uanu/Punchbowl Neighborhood Board No. 12 violated the Sunshine Law, part I of chapter 92, HRS, by denying members of the public the opportunity to orally testify on an agenda item at the Board's meeting of May 18, 2004. A copy of Mr. Lilly's letter to OIP (with attachments) is enclosed for your information.

Mr. Lilly included a copy of the minutes of the May 18 meeting in the attachments to his letter to OIP. Thus, unless you dispute the accuracy of the copy provided by Mr. Lilly, you need not provide OIP a copy of the meeting minutes. If you wish to provide OIP with your position regarding Mr. Lilly's allegations, including any legal arguments or background information you believe to be relevant, we ask that you do so by December 14, 2005.

Mr. Al Canopin
November 30, 2005
Page 2

Thank you for your cooperation and assistance in this matter. If you have questions about this matter or the Sunshine Law in general, please do not hesitate to contact me.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

JZB: nkb
Enclosures

cc: Michael Lilly (via facsimile)
Baybee Hufana-Ablan (via e-mail)

NING, LILLY & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700 • Honolulu, HI 96813
(808) 528-1100

Ke-ching Ning
Michael A. Lilly
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WRITER'S DIRECT E-MAIL ADDRESS:
Michael@nljlaw.com

October 28, 2005

Mr. Leslie H. Kondo
Office of Information Practices
State of Hawai'i
No. 1 Capitol District Building
250 South Hotel Street, Suite 107
Honolulu, HI 96813

Re: Nu'uano/Punchbowl Neighborhood Board No. 12 (the "Board")

Dear Mr. Kondo:

The issue presented by this letter is whether a neighborhood board may deny a member of the public from being heard on an agenda item.

On May 18, 2004, the Board violated the Sunshine Law, Section 92-3, by failing to permit members of the public to present oral testimony on an agenda item. I filed a complaint against the Board on May 21, 2004, but now feel I must bring it to your attention because the Neighborhood Commission has yet to hear the matter.

Attached please find the following:

1. My May 21, 2004 Complaint.
2. The Minutes of the May 18, 2004 Board meeting.
3. Board chair response dated June 18, 2004.
4. June 15, 2004 Board minutes.

The essential facts are that on May 18, 2004, the agenda item of the Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center ("IRH") came on to be heard by the Board. Attendance at that meeting was reportedly the largest in the Board's history because of the overwhelming numbers of residents who strongly opposed the permit. When the agenda item came on for hearing, the chairman dictated that only one person

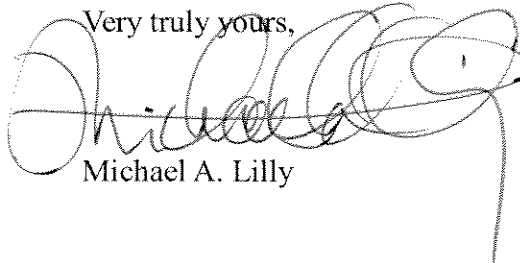
Mr. Leslie H. Kondo
October 28, 2005
Page 2

for each of the alleged two sides of the agenda item would be allowed to speak and then only for five minutes. The Minutes state: "Chair Magaldi announced that one spokesperson from each side would have five minutes to speak...." Many people in the audience, including me, protested that there were no two sides, nor was there a "spokesperson"; rather, every member of the public in attendance had an individual right to be heard on the agenda item. It was pointed out that no one person represented the interests of other persons in attendance, but that every member of the public had an individual right to be heard. Notwithstanding the vociferous opposition of many members of the public in attendance, the chairman repeated that he would only allow two persons to speak – one for each side. What then happened was that one person spoke on behalf of IRH. Gayle Chestnut spoke in opposition; he then yielded unused time for me to make brief comments. However, I was not given a full allotment of time to speak and dozens of members of the public in attendance who wished to speak in opposition were not permitted to speak.

Section 92-3 of the HRS mandates that "boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item." The actions of the Board chairman, by denying members of the public to be heard on the agenda item at issue, violated that section of the law. I have no issue with the concept that, because of the unusual numbers of people present in opposition, the chairman had a right to "provide for reasonable administration of oral testimony by rule". But there was no "rule" in place. Also, I would have taken no issue if members of the public were limited to perhaps two or three minutes per person. But denying dozens of members of the public the right to speak and limiting the testimony to only two "spokespersons", as if there were only two positions on the matter and if there was a "spokesperson", violated the Sunshine Law.

I ask that you kindly review this matter and, if you agree, advise the Commission that a wholesale denial of the right to be heard by members of the public on Board agenda items violates the Sunshine Law.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael A. Lilly", with a long, sweeping horizontal line extending to the right.

Michael A. Lilly

MAL:dyi

Attachments

cc: Jennifer D. Waihee, Esq., Deputy Corporation Counsel (w/o attachments)

P.S. The statement in the 5/18 minutes that "representative from both sides agreed" is absolutely false.

PROCEDURES GOVERNING HEARINGS
CONDUCTED BY THE NEIGHBORHOOD COMMISSION

COMPLAINT FORM

1. COMPLAINANT

Print Name: MICHAEL A. LILLY
First Middle (or Initials) Last

Residence Address: 2769 LANILOA RD, HONOLULU, HI 96813
Number Street Apt. # City Zip

Mailing Address: _____
(If different from above residence) City Zip

Phone: (R) 4786913 (B) 5281100 (UL) _____

Please check below, as applicable:

☐ I am a member of Neighborhood Board
☒ I am a resident of Neighborhood Board 12
☐ Other (specify) _____

2. ALLEGATION

WUHANU/PUNCHBOWL No. 12
Name of Neighborhood Board

Please complete the following:

*Note: Complaint must be filed within forty-five calendar days from date of alleged violation. (Sec. 1-10.4 NP)

*☒ Regular Meeting. Date: 4/20/04 & 5/18/04 Time: _____
*☐ Special Meeting. Date: _____ Time: _____
*☐ Other (specify) _____

Violation of the following: (complete below as applicable)

☒ Sunshine Law, HRS Chapter 92, Section 92-3
☐ Meeting rule procedure _____
☐ Procedure requirement to obtain neighborhood consensus. _____
☐ Revised Neighborhood Plan, Section _____
☐ Other (specify) _____

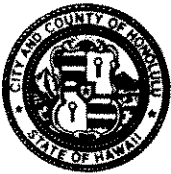
3. SPECIFICS (Describe alleged violation - what occurred, how, when, and where it occurred).

- ① DENIED PUBLIC RIGHT TO SPEAK ON AGENDA ITEM CUP FOR 1 RHT.
- ② ARBITRARILY LIMITED ONE PERSON/SIDE FOR 5 MINS.
- ③ DENIED MEANINGFUL PUBLIC PARTICIPATION (MEMBERS OF PUBLIC IN BACK UNABLE TO HEAR)
- ④ BOATED MEMBERS ABSTAINED IMPROPERLY (AFRAID OF MANDALIKE SUIT &/OR CLAIMED BOATED HAD NO DUTY RE CUP'S)
- ⑤ IN APRIL PARLIAMENTARIAN IMPROPERLY CLAIMED
☐ Attachments: TABLED ITEM COULD NOT GO BACK ON AGENDA. ROBERT'S RULES ALLOW MAJORITY OF QUORUM TO

FILED BY: Michael Lilly
COMPLAINANT (signature)

WITNESSED BY: Benjamin Kanyf
Executive/Secretary, Neighborhood Commission

DATE: 5-21-04



NUUANU/PUNCHBOWL NEIGHBORHOOD BOARD NO. 12

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET, ROOM 400 • HONOLULU, HAWAII 96813
PHONE: (808) 527-5749 • FAX: (808) 527-5760 • INTERNET: www.co.honolulu.hi.us

REGULAR MEETING MINUTES TUESDAY, MAY 18, 2004 BOOTH DISTRICT PARK

CALL TO ORDER – Chair Magaldi called the meeting to order at 7:19 p.m. A quorum was present.

MEMBERS PRESENT–Al Canopin, Jr., Remy Luria, Patricia Jones, Sylvia Young, Signe Godfrey, Russ Awakuni, Wendy Ogawa, Patt Spencer, Audrey Hidano, and Joe Magaldi.

MEMBERS ABSENT – James Bannan, Richard Carreira, Dean Asahina and Philip Nerney.

GUESTS – Sean Matsumoto, Sgt. Charles Simmons, and Lt. Randy Kobayashi (Honolulu Police Department – District 5), Jeff Roberts, Erika Teska, Akira Fujii, Atsushi Matsumoto, Linda Smith (Sr. Policy Advisor/Governor's Representative), Kayo Puerto, Kiyonari Inomoto, Toshiko Noguchi, and Stanley Oshiro (IRH); Pat and Thad Ekstrand, L.K.C.Ho, Violet Y. Ho, Mary Adamski (Honolulu Star-Bulletin, Tyrone Baptist, Coriette Lum, Doris Lum, Ed Honda, Shayne Paculan, Verna Jamieson, Donald Dupont, P. Yasumori, Masa Taira, Miki Taira, Darlene Tsubota, Julie Oba, Moshi Tagud, Ren Yoshida, Gregg Hartung, Nick Gavina, Jane Buress, Nadine Miyagi, Richard Asato, W. Gonzalez, Karl Aschenbrenner, Mitsuko, Taura, Yoshiro Taura, Setsuko Nomi, Katherine Leonard, Ian Sandison, Franklin Pang, Harry H. Onaka, Thomas A. Glass, Becky Chestnut, Gayle Chestnut, Lane martin, Noriko Jones, Nick Blanie, Bessie Mizuno, Patti Ikeda, T. Igata, Tetsumi Kurahara, William. Ridgway, R. Bravo, Mary McDonald, Michael and Cindy Lilly, Buck Laird, Coral Pietsch, Cheryl Ann Loo, Pam Vanderwolf, Senator Suzanne Chun Oakland, Lauren Oakland, Marvin Dryden, Janelle Dryden, Lindel Smith, Gail Holm-Kennedy, Bronwen Welch, Iris Oda (Board of Water Supply), Brody McClellan (Representative Corinne Ching's Office), Joan Bennet, Bev Mercado and Carrie Ginnane (IRH), Kenneth Chang Lorelei Fukuda, Captain John Yoshimoto and Firefighter Aaron Lenchanko (Honolulu Fire Department – Nu'uuanu Station), Janice Sera, Donivee Laird, Representative Sylvia Luke, Yuri Farrant, Bob Tom, Jan Farrant, Lori Manton, John Pegg, Kris Leverich, John Fasone, Shawn Hamamoto (Councilmember Rod Tam's Office), Councilmember Rod Tam, Fumiko Hayashi, Walter Yamzaki and Kaoru Yoshioka (IRH),and Nola Frank (Neighborhood Commission Office staff).

FIRE, POLICE, AND NEIGHBORHOOD SECURITY REPORTS:

HONOLULU FIRE DEPARTMENT (HFD) – Captain John Yoshimoto reported the following: 1) Statistics for the month of April included 1 structure, 1 rubbish and 2 fire responses; 33 medical responses and 7 miscellaneous calls. 2) Fire Safety Tip: Set your water heater at 120 degrees Fahrenheit, or call an electrician or plumber to set it for you. Temperatures higher than 120 degrees Fahrenheit may cause scalding.

NEIGHBORHOOD SECURITY WATCH (NSW):

PAUOA – Mason Aiona was unable to attend tonight's meeting.

NU'UANU – Paula Kurashige reported the following: 1) Burglaries from Wyllie Street and up Nu'uuanu. 2) There is a burglar who sits in trees dressed as a ninja. 3) Mail from mailbox thefts on Pali Highway have been found at Jackass Ginger. It was suggested that residents pickup their mail from their mailboxes as soon as it is delivered.

PAPAKOLEA COMMUNITY REPORT – Al Canopin started to give his report when the Chair had to call a disruptive resident from the back of the room out of order. Chair Magaldi explained that the meeting will have order or be adjourned. He said that the Board is there to listen and represent the community and reiterated that order be maintained. He said if the audience in the back of the room could not hear to please let him know and the person reporting would be asked to stand and speak louder.



NU'UANU/PUNCHBOWL
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Al Canopin reported that the Papakolea's 70th Luau has been postponed until August 21, 2004 and the location has been changed from the recreation center to Stevenson Middle School because the center would be unable to accommodate more than 1200 people.

HONOLULU POLICE DEPARTMENT:

DISTRICT 1, HONOLULU – Sgt. Calicdan reported the following:

1. Auto thefts are up by ten, but cars are being recovered. He mentioned that recovered cars are not all from the area but are being stolen in another district and dumped here. Auto thefts are still occurring in the Pacific Heights and Pauoa area. Burglaries are down 11 as compared with 17 last month.; UEMV (unauthorized entry to motor vehicle) is up 26.
2. Four persons were arrested at a Pauoa residence, on charges that included attempted burglary, harassment of a police officer, detrimental drugs, assault and terroristic threatening.
3. Regarding a concern last month about cars racing in the Pacific Heights area, a few of the racers were given multiple citations for reconstruction. One driver was arrested for DUI.
4. A warrant sweep on Ahekol Street and Booth Road resulted in six arrests for outstanding warrants.
5. Safety Tip: Lock doors, windows and everything in your home prior to leaving.

Ogawa arrived during the above portion of the meeting. (9 members present)

Questions, answers and comments:

1. Spencer and Kurashige thanked HPD for their hard work in the district.
2. Ogawa expressed concern regarding drivers turning right on the red arrow coming from Pauoa Road onto Lusitana Street. She has encountered several near accidents. This violation occurs between 7:00 and 7:30 a.m. daily. Also, there are violators making a right turn from Kanealii Street onto Pauoa Road daily. She asked if these areas could be enforced. Calicdan responded that the day shift sergeant would be informed.
3. A resident expressed concern about a suspected burglar who entered her home while she was there. She did scream and called 911, and the suspect ran away, but his license plate number was given to the police.
4. Canopin mentioned that the Papakolea community is requesting increased surveillance and foot patrols at the recreation center due to increased drug activity, fights, and illegal drinking of alcoholic beverages.

DISTRICT 5, KALIHI – Sgt. Simmons reported the following: Statistics for last month included sex offenses 1, robbery 0, burglary 9, theft 8, UEMV 14 (unauthorized entry into a motor vehicle), motor vehicle theft 3, assault 0, harassment 1, property damage 0, drugs/narcotics 0, family offense 1, DUI 2, liquor law 0, miscellaneous public cases 10, vehicle towed 16, MVC 34 (motor vehicle collisions), arguments 8, nuisance complaint 10, parking violations 36, suspicious circumstances 42, miscellaneous service calls 23.

Question, answers and comments: Kurashige offered District 5 officers' statistics dating back to 1997 from her Neighborhood Security Watch. She thanked them and the solo bikers for curbing speeders. She mentioned that the community wants speeding stopped.

Without objections the agenda was taken out of order to IV. Unfinished Business: Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center.

CONDITIONAL USE PERMIT MINOR (CUP-MINOR) FOR THE INSTITUTE FOR RESEARCH IN HUMAN HAPPINESS MEDITATION CENTER (IRH) – Chair Magaldi announced that one spokesperson from each side

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would have five minutes to speak, saying the Board would then vote on the issue. Representatives from both sides agreed. Chair Magaldi mentioned that currently Eric Crispin, Director of DPP, has received many letters from the Pacific Heights residents and also sent a letter along with the other correspondence.

OPPOSITION:

PACIFIC HEIGHTS COALITION – Gayle Chestnut, representing the coalition, gave Chair Magaldi a copy of an additional petition with approximately 120 more signatures now totaling 246. The following objections were expressed:

- A transient project facility in a residential neighborhood.
- The roads are substandard, there would be increased traffic, and the sewer system might not meet the needs.
- It was mentioned at the last meeting that one session would be held per week but that has changed to two per week having approximately 40 guests at one time.
- It is not proper that a conditional use permit minor be granted when in actuality it seems that a zoning variance is needed.
- A lodging facility will be built first and then the meditation center.
- Concerns were expressed that the story regarding the construction of the center keeps changing.
- The coalition believes that it is not legal for the Department of Planning and Permitting (DPP) to issue a permit.

Michael Lilly expressed the following:

- Requested a firm decision from the Board that the CUP minor is denied.
- Have a public hearing so that all members of the community can attend.
- Commercial activity is not needed in the Pacific Heights community.
- There are no sidewalks on Pacific Heights. The Board should condemn the permit.

THE INSTITUTE FOR RESEARCH IN HUMAN HAPPINESS MEDIATION CENTER (IRH) – Reverend Sean Matsumoto expressed the following:

- Ministers in support of the project from other branches of the IRH were introduced.
- IRH owns the property and are now part of the community and trying to be good neighbors.
- They understand the concerns of the neighbors and are trying to find solutions. A traffic study showed that impact would be minimal. Noise should not be a problem because this kind of training is very quiet.
- At the last meeting someone said that they are institutional strangers. It saddens them that they are not wanted in the community, because they are already part of the community.
- All they are asking for is a chance to practice his/her religion. The center would be for members only and for training purposes. They would like to be good neighbors.

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A resident objected to allowing only five minutes per side because she was not able to attend the other meetings and expressed her opinion that the Board supports the community. Chair Magaldi told her that a letter has been sent to DPP and copies were available for review.

For the purpose of discussion, Awakuni moved, seconded by Spencer to withdraw his motion made at the March 16, 2004 meeting in support of the Conditional Use Permit Minor.

Young moved, Kurashige seconded that Neighborhood Board No. 12 go on record to support the Pacific Heights residents in denying the Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center.

Discussion followed:

- Kurashige was in opposition to the center.
- Luria noted that he supported the residents at the first meeting and questioned how many members belonged to the congregation. To date he has not received an answer.
- Hidano mentioned that she supports and acknowledges the resident's concerns, but will be abstaining as noted from day one and will leave the decision to the Department of Planning and Permitting (DPP). She does not want to get into a potential lawsuit like the Manoa Neighborhood Board did in which the Board was sued and individual members of the Board were also sued because of their stand on another situation that came before the Board.
- Young mentioned that she had an opportunity to tour the property and support the residents.

Awakuni moved, Ogawa seconded to amend the motion to add the last be it resolved paragraph from the draft resolution that he circulated to Board members. The motion carried unanimously.

The motion reads – that Neighborhood Board No. 12 go on record to support the Pacific Heights residents in denying the Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center and that the Neighborhood Board as the voice of the community, clearly recognizes that the Pacific Heights community is gravely concerned with IRH's application, and that it strongly recommends on behalf of the community that the Director of the Department of Planning and Permitting (DPP) hold a public hearing in the Pacific Heights area on IRH's permit application as soon as practicable.

The motion failed 6-0-5. Yes votes: Luria, Young, Ogawa, Spencer, Godfrey, and Kurashige. **Abstentions:** Canopin, Jones, Awakuni, Hidano, Magaldi. Eight votes are need for a motion to pass. The hostile residents badgered board members because of the outcome of the vote. It was explained that a quorum for a motion to pass is half plus one (8) of the total number of board seats; 15 for our Board.

Luria moved and seconded by Kurashige to send the motion and vote counts regarding the Institute for Research In Human Happiness to Eric Crispin, Director for the Department of Planning and Permitting (DPP).

Discussion followed:

- Young said that the Manoa liability suit has nothing to do with the CUP Minor. That situation was a landlord/tenant issue. She noted that she does not see any liability because this is part of the board's duties.
- Luria agreed with Young and said there is some confusion about the decision and if there is any reservations, advice from Corporation Counsel would help.
- Chair Magaldi reiterated that as requested last month, a letter with correspondence from IRH and residents was sent to Eric Crispin with emails, etc. Copies of the letter were available for review.

The motion carried unanimously, 11-0-0.

Chair Magaldi thanked the residents for attending the meeting and told them the Board would support them for a public hearing. He suggested that emails and letters continue to be sent to DPP.

Councilmember Rod Tam said that he is working with the Pacific Heights residents. IRH submitted their application to DPP today, has 10 working days for review, and then to the public. Residents may request a copy of the application free of charge by contacting his office at 547-7006. The administrative process is that the DPP director makes the final decision, but is not required by law to hold a public hearing. However, his office has requested a public hearing. He commented that he must see the application.

NEW BUSINESS: CONDITIONAL USE PERMIT AND SPECIAL DISTRICT PERMIT FOR ROOF TOP ANTENNA AT 275 AUWIOLOLIMU STREET – T MOBILE: Wayne China presented the following:

Voice Stream Wireless, an affiliate of T-Mobile USA, is in the process of improving its GSM digital voice and data wireless communication services within the Pacific Heights, Pauoa Valley, West Punchbowl and West Papakolea area due to increased subscriber usage. To minimize the potential of visual impact from the proposal site the antenna facility will be installed on the rooftop of the (4 story) apartment building located at 275 Auwaiolimu Street. The company is currently negotiating with the owner regarding leasing of space. A stealth screen wall structure painted to match the existing building will be erected on the rooftop. Panel antennas, transceiver and ancillary equipment will be mounted inside the rectangular wall structure.

Questions, answers and comments:

- 1) The antenna structure would be twelve feet high.
- 2) Alternative sites may be a near by school or a park. Department of Parks and Recreation Director, Bill Balfour, said that there is a moratorium on antenna sites constructed in City parks. Other areas are not in the right alignment for coverage.
- 3) The site could be put on another building if one could be found.
- 4) Regarding co-location with another carrier, unless the owner decides to lease another portion of the rooftop it will not happen. All mobile carriers have different designs on coverage.
- 5) The nearest antenna to this area is located in downtown. If the lease is secured, there is no guarantee that the permit would be granted.
- 6) Resident Lane Martin expressed opposition to the project.
- 7) Resident Bradley Wilcox was in opposition for the following reasons: a) the proposed antenna site on the apartment building is surrounded by single-family homes and is usually located on high rises, ridgelines and not visible from the surrounding neighborhood. b) Impede view channel of residents living in the upper Punchbowl area. c) Concerned about the health effects of those living near an antenna.

CITIZENS' CONCERNS:

PACIFIC HEIGHTS COALITION – Gail Kennedy requested that the issue (IRH Meditation Center) be put on the June agenda for further discussion. She strongly stated that the residents have a right to know the reasons for the abstentions. She added that the community, to speak for them, votes Board members in.

Further discussion followed:

1. Young said that the issue is not over and she does not see why it cannot be kept on the agenda.
2. Awakuni mentioned that it is a matter for DPP to decide and the role of the Board is to voice the community's concerns. He noted that the letter of intent requesting a public hearing has been submitted to DPP Director, Eric Crispin.

3. Kennedy stated that the people have a right to know why some Board members abstained. She feels that the Board does not represent the people, once again stating that if they take no position, then why have a Neighborhood Board.
4. Spencer agreed with Kennedy about keeping the issue on the agenda. Young reiterated that the issue should be kept on the agenda, noting that she does not know why other Board members can't make an opinion to vote for the people.

Luria moved and seconded by Awakuni to draft a letter to Corporation Counsel clarifying whether this situation is the same as the Manoa liability case. Discussion followed. The motion carried unanimously, 8-3-0.

UNFINISHED BUSINESS CONTINUED:

Visioning – Deferred

Roadway Safety Improvement Committee – Kurashige reported that she has documentation of speeding on Pali Highway.

CITIZENS CONCERNS:

Fallen Rocks in Upper Booth Road – Joe Fasone expressed the following concern: 1) the reoccurrence of fallen rocks in the upper Booth Road area, which also happened three years ago.

Pig Hunters in Pauoa Valley – Joe Fasone reported that pig hunting is going on in the upper Booth Road area. He mentioned that hunting dogs trespass onto his property and mauled one of his dogs. The Board of Water Supply and the State Department of Land and Natural Resources authorized pig hunting from the Papakolea side of the valley. Fasone was informed that the land in question is either under the jurisdiction of DLNR or Hawaiian Homes. Follow up will be done.

Video Taping of Board Meetings or Board Newsletter – Spencer asked if there is any information regarding the video taping of Board meetings since it has been a long time with no response. She also mentioned that she had offered to do a newsletter, but no one was willing to help. Chair Magaldi replied that a person to video the meeting is still being sought and he is awaiting callbacks.

Refreshment Account – The Board unanimously agreed that the refreshment account be used to provide refreshments at the June meeting.

Punchbowl Cemetery Signage – A request to replace the faded Punchbowl Cemetery sign has been put in through Congressman Daniel Inouye's office for funding.

Proposed T-Mobile Antenna at 275 Auwailimu Street – Luria moved and Young seconded that the Neighborhood Board No. 12 express concern about the size and intrusion of the antenna structure into the residents and Punchbowl. The Neighborhood Board requests that T-Mobile find additional alternative sites and present them at the Neighborhood Board meeting. The motion carried unanimously, 11-0-0.

Rock Slide on Henry Street – Young requested that this item be placed on the June agenda.

APPROVAL OF THE REGULAR MEETING MINUTES OF March 16, 2004, April 20, 2004, and the March 30, 2004 Ad Hoc Committee Meeting – Deferred

BOARD OF WATER SUPPLY – Iris Oda was in attendance earlier in the meeting and the monthly report was given to the Neighborhood Assistant and available for review.

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ELECTED OFFICIALS:

GOVERNOR'S REPRESENTATIVE – Linda Smith, representing Governor Lingle, reported the following: 1) Follow up will up be done regarding the pig hunters and fallen rocks in Pauoa Valley. 2) Pothole repairs are moving forward. 3) Concerning the quality of life, because of disturbing provision on the omnibus drug bill, it was vetoed by the Governor, but overridden by the legislature.

Questions, answers and comments: a) It was asked if surrounding neighbors are notified if drug treatment facilities are going to be in their neighborhood. b) The State contracts the City to maintain the stoplights on Pali Highway.

MAYOR'S REPRESENTATIVE – Deferred. The Mayor's monthly Neighbor-to-Neighbor Newsletter was distributed.

COUNCILMEMBER ROD TAM – Councilmember Rod Tam distributed his monthly report and highlighted/added the following: 1) the following public related issues are being addressed – a) material solid waste disposal, sewer systems (sewer lines and sewer treatment plants), and road maintenance. 2) He asked for Board support a public hearing to be held next month regarding roads that need maintaining from Kalihi to Makiki. He asked that copies of testimonies be sent to Mayor Harris and also to his office.

SENATOR SUZANNE CHUN OAKLAND – Senator Chun Oakland was present early during the meeting, but was unable to stay. She had only a few thick packets, which she gave Spencer to distribute.

SENATOR CAROL FUKUNAGA – A representative was not present.

REPRESENTATIVE SYLVIA LUKE – Representative Luke distributed her monthly report and highlighted/added the following: 1) Thanked Linda Smith, Governor's Representative, for doing a good job on the education reform bill. 2) A public hearing process for half-way houses will be held to discuss if the State Department of Health (DOH) would permit these houses or not. The process would give the community an opportunity to voice their concerns.

REPRESENTATIVE CORINNE CHING – A representative was not present.

CHAIR'S ANNOUNCEMENTS – None

ADJOURNMENT – The meeting was adjourned at 9:36 p.m.

Submitted by,

Nola Frank
Neighborhood Assistant

**Ben Kama, Executive Secretary
Neighborhood Commission
530 South King Street
Honolulu, Hawaii 96813**

Ben,

**Received your letter of 21 May 2004 concerning complaint against
Neighborhood Board #12 on 2 June 2004. The complaint was on the agenda
for our 15 June 04 and the results are as follows:**

**The board members voted yes if the complaint in their mind was not valid, no
if they agreed with the complaint and some choose to abstain from voting for
different reasons:**

**Alleged Item #1. The board denied public the right to speak on the agenda
item CUP for IRHH.**

Votes were 6 yes, 5 no and 3 abstained.

**Alleged Item #2. The board arbitrarily limited one person/side for 5 minutes.
Votes were 12 yes, 0 no and 3 abstained.**


**Alleged Item #3. Denied meaningful public participation (members of public in
back or room unable to hear). Votes were 9 yes, 3 no and 3 abstained.**

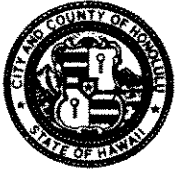
**Alleged Item #4. Board members abstained improperly (afraid of Manoa
Neighborhood Board law suit or claimed board had no duty on CUP's. Votes
were 7 yes, 3 no and 5 abstained.**

**Alleged Item #5. In April Parliamentarian improperly claimed tabled item could
not go back on agenda. Roberts Rules allow majority or quorum to do so.
Votes were 9 yes, 5 no and 1 abstention.**

**Items #2, 3 and 5 were denied by the board. Items #1 and 4 failed to deny or
admit to the allegations.**

**I believe personally that all the allegations in the complaints of both Mr.
Farrant and Mr. Lilly are not valid and as Chair of Nuuanu/Punchbowl
Neighborhood Board #12 I took appropriate action to insure the residents
concerns were properly addressed and I acted within the law. If you have
questions please call me at 527-5823.**

 **Joe Magaldi** 6/18/04
Chair, Nuuanu/Punchbowl Neighborhood Board #12



NUUANU/PUNCHBOWL NEIGHBORHOOD BOARD NO. 12

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET, ROOM 400 • HONOLULU, HAWAII 96813
PHONE: (808) 527-5749 • FAX: (808) 527-5760 • INTERNET: www.co.honolulu.hi.us

REGULAR MEETING MINUTES TUESDAY, JUNE 15, 2004 BOOTH DISTRICT PARK

CALL TO ORDER – Chair Magaldi called the meeting to order at 7:19 p.m. A quorum was present.

MEMBERS PRESENT- Jim Bannan, Richard Carreira, Al Canopin, Jr., Remy Luria, Patricia Jones, Sylvia Young, Russ Awakuni, Wendy Ogawa Signe Godfrey, Patt Spencer, Dean Asahina, Audrey Hidano, Paula Kurashige, Joe Magaldi, and Phil Nerney.

MEMBERS ABSENT – There were no absent members.

GUESTS –Sean Matsumoto, Erika Teska, Hiromi Matsushima, Eric Noguchi, Akiri Fujii (IRH), Jim Mee and Rosemary Fazid (Ashford & Wriston), Yasuko Nakamura, Katsumi Harvey, Toshiko Noguchi, Jeff Roberts, Miwako Yamamoto, Leslie Grandison, Masako Nakato, Masami Grandsion, Makoto Okamura, Kokei O., Bev Mercado, Lorelei Fukuda, Dr. Brenda Andrieo (IRH), Sgt. Calvin Calicdan and Lt. Curtiss Loui (Honolulu Police Department, District 1), Bruce Nakamura (IRH), L.F. Ho, Vi Ho, Sgt. Gordon Costa and Officer Mike Tamashiro (Honolulu Police Department, District 5), C. Lum, D. Lum, Masa Taira, Carole Hickerson, Shayne Paculan, Mason Aiona (Neighborhood Security Watch), Miki Taira, Kathy Grebe, Melvyn and Nadine Miyagi, Bob Tom, W. Ho Tom, Captain Edward Oda and Firefighter Michael Lee (Honolulu Fire Department, Nu'uanu Station), Richard T. Carreira, II, Karl Aschenbrenner, Shawn Hamamoto (Councilmember Rod Tam's Office), George Keys, Nick Blank, Michael Lilly, Carol Kozlouch, Thomas A. Glass, Nahaku Brown, Gayle Chestnut, John Steelquist (Makiki Neighborhood Board No. 10), Senator Suzanne Chun Oakland, Marvin Dryden, Janelle Dryden, Richard Bissen, Jr. (First Deputy Attorney General/Governor's Representative), Bruce Coppa, Frank Carlos, Kazuyo Sugiyama, and Nola Frank (Neighborhood Commission Office staff).

Without objections, the agenda was taken out of order to New Business: 7.A Complaint by Michael A. Lilly, dated May 21, 2004 and 7.B Complaint by Yuri V. Farrant, dated May 21, 2004.

NEW BUSINESS:

Complaint by Michael Lilly, dated May 21, 2004, and Complaint by Yuri V. Farrant, dated May 21, 2004:

Awakuni explained to the Board that two complaints were filed against the Board on May 21, 2004. He distributed copies of the section of the rules from the Neighborhood Plan dealing with procedures governing hearings and Board responses that are required. There is a thirty-day deadline for response from the Board regarding the complaints. The two complaints are almost identical, except for the complainant. Awakuni suggested that each item in the complaints be taken separately and a motion made to either admit or deny each specific item of the complaint. The response will then be inserted by Chair Magaldi into the complaint response form and given to the Neighborhood Commission. There were no objections to Awakuni's suggestion.

Specific 1 – The Board denied public right to speak on agenda item CUP Minor for IRHH. Awakuni moved Hidano seconded that the Board deny Specific 1, regarding the public's right to speak on an agenda item.

Discussion followed:

1. Luria had no response to item 1, because he does not know what the exact public's right to speak is based on. He noted that no specifics were listed. Resident Michael Lilly disrupted the Board's discussion and his speaking was called out of order. Chair Magaldi explained to him the public would have a chance to provide input after the Board completed their discussion. Lilly then quoted the Hawaii Revised Statutes 92.3 that allows anyone to speak on an agenda item. Chair Magaldi once again reminded Lilly that his speaking was called out of order and would have his turn to speak when the Board finished its discussion. Lilly called Chair Magaldi out of order by not allowing him to speak.



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2. Canopin mentioned that several Board members did not have copies of the complaint and asked if each item could be read aloud, which Awakuni agreed to do.
3. Awakuni reiterated that this issue of the CUP Minor for the Institute for Research on Human Happiness Meditation Center has been on the agenda three times, and in addition, the Board held a special meeting. Last month the Board took a position that the Conditional Use Permit Minor be denied, which failed to carry.
4. Godfrey commented that she feels if the public wants to speak they should be allowed to do so. Luria quoted the sunshine law, which allows a Board (their option) to limit the time for each speaker.

Board members were instructed that voting aye means that they deny the complaint, and voting nay would be that they agree with the complaint.

The motion failed 6-5-3. Aye: Bannan, Canopin, Jones, Awakuni, Hidano, Magaldi. **Nay:** Young, Ogawa, Godfrey, Spencer, and Kurashige. **Abstention:** Carreira Luria, Nerney. Eight votes are need for a motion to pass. Board action to deny the complaint failed to carry.

Nerney arrived during the above portion of the meeting. (14 members present)

Specific 2 – The Board arbitrarily limited one person/side for five minutes. Awakuni moved Hidano seconded that the Board deny Specific 2.

Discussion followed:

1. Nerney commented that he did not observe any arbitrary denial of the right to speak at the April meeting.
2. Young commented that while she was on her cell phone, Chair Magaldi did not give her the opportunity to simultaneously speak on the issue at this time.
3. With reference to the last Board meeting Awakuni said that both sides were each given five minutes to speak because a special meeting, as well as several other meetings had been held. The five minutes would allow each side to summarize its views prior to the Board taking action.

The motion carried 12-0-3. Aye: Bannan, Canopin, Luria, Jones, Young, Awakuni, Ogawa, Godfrey, Spencer, Hidano, Kurashige, Magaldi. **Nay:** 0. **Abstention:** Carreira, Asahina, Nerney. Board action to deny the complaint carried.

Asahina arrived during the above portion of the meeting. (15 members present)

Specific 3 – The Board denied meaningful public participation (members of the public in the back of the room were unable to hear the speakers). Awakuni moved, seconded by Hidano that the Board deny Specific 3.

Discussion followed.

1. Mr. Lilly said that the people in the back of the room could not hear what was happening. He said that members of the public have a right to participate in what is going on with this Neighborhood Board. It was noted that complaints about not being able to hear were made tonight when the microphones were not yet turned on prior to someone's speaking. Last month's meeting had no microphones and the audience repeatedly asked what was going on and were denied the right to participate in the process of this Board. Lilly said that Mr. Ben Kama, Executive Secretary of the Neighborhood Commission acknowledged at a meeting with the Pacific Heights Coalition that it is an obligation of the Board to assure that all members of the public can meaningfully participate at the meeting. Lilly feels that the public was not allowed this participation.

Awakuni replied that Chair Magaldi instructed the audience and members of the Board to stand when they speak, which was the limited effort that could be done. He noted that there is a sound system tonight, but the Board does not have one on a regular basis.

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The motion carried 9-3-3. Aye: Bannan, Canopin, Luria, Jones, Awakuni, Spencer, Hidano, Kurashige, Magaldi. **Nay:** Young, Ogawa, and Godfrey. **Abstention:** Carreira, Asahina, Nerney. Board action to deny the complaint carried.

Specific 4 – Board members abstained improperly (afraid of Manoa Neighborhood Board-like lawsuits and/or claim Board had no duty regarding Conditional Use Permits). Awakuni moved Hidano seconded that the Board deny Specific 4.

Discussion followed:

1. Hidano explained that she was voting yes, and it is just the opinion of the complainant that she improperly abstained. She stated that it is her right to abstain.
2. Luria noted that he did not know why other Board members abstained. Hidano reiterated that from day one her reasons for abstaining were given.
3. With reference to the Sunshine Law, Lilly said he could not meaningfully object to what was done tonight. Hawaii Revised Statutes 92.3 relating to the Sunshine Law gives everyone the right to give testimony before the Board. Limiting each side to five minutes to represent a community or interest of such vital concern is against the Sunshine Law. Lilly stated that the sunshine law was violated two months in a row. He said that, "according to Mr. Ben Kama, abstentions for reasons stated are improper." The Manoa Board situation was due to liability by individual Board members. Lilly noted that the Board has the City's Corporation Counsel to defend them. Awakuni noted that he abstained because it is a Department of Planning and Permitting matter, and the department will make the final decision.

Lilly then quoted Mr. Kama again, "the Board has a duty to take the wishes, decisions, and aspirations of the community and make them known. Abstaining does not fulfill the obligation of this Board."

4. Hidano mentioned that she was not sure what the Manoa case was about, but knew that lawsuits were brought against individual Board members who went out of the Board's scope. She asked Lilly and fellow residents if she voted yea or nay would he and the other residents have indemnified her as a Neighborhood Board member?

Lilly responded that in an official capacity she is already indemnified by the City Council. Hidano answered that Corporation Counsel did not represent the Manoa Board members and that she has a right to abstain as earlier explained.

5. Lilly stated that if you are going to be a member of this Board and represent this community opposing this IRHH Meditation Center and are not willing to take a stand on such an important issue, you should not be on the Board.

The motion failed 7-3-5. Aye: Bannan, Canopin, Jones, Awakuni, Ogawa, Hidano, Magaldi. **Nay:** Young, Godfrey, and Spencer. **Abstention:** Carreira, Luria, Asahina, Kurashige, Nerney. Eight votes are needed for a motion to pass. Board action to deny failed. No other Board action was taken on this matter.

Specific 5 – In April the parliamentarian improperly claimed the tabled item could not go back on the agenda. Robert's rules allow majority of quorum to do so. Awakuni moved, seconded by Hidano that the Board deny Specific 5.

Discussion followed:

1. Awakuni commented that referring to him as a parliamentarian was not the issue, but the issue was not on the agenda and per the Sunshine Law the Board could take no action.
2. Young commented on allowing each side five minutes to speak at the May meeting.

3. Resident Gayle Chestnut mentioned that at the May meeting he was speaking for himself and unaware of the five-minute time limit. He believes it is not the way the Board should be conducted.

The motion carried 9-5-1. Aye: Bannan, Canopin, Luria, Jones, Awakuni, Asahina, Hidano, Magaldi, Nerney. **Nay:** Young, Godfrey, Spencer, Ogawa, and Kurashige. **Abstention:** Carreira. Board action to deny the complaint carried.

The order of the agenda resumed.

ELECTION OF BOARD OFFICERS (June 2004-2005 Term):

Chair – Awakuni moved Asahina seconded nominating Joe Magaldi. Kurashige moved, seconded by Spencer nominating Wendy Ogawa. Godfrey moved Luria seconded nominating Remy Luria for Chair. Spencer moved Kurashige seconded nominating Dean Asahina for Chair. Asahina moved, Godfrey seconded that nominations be closed. The motion carried unanimously to close nominations. A roll call vote was taken and the results were as follows: Magaldi 7 (Bannan, Carreira, Awakuni, Asahina, Hidano, Magaldi, and Nerney); Luria 2 (Luria, Godfrey); Asahina 2 (Canopin, Jones); Ogawa 4 (Young, Spencer, Ogawa, Kurashige).

A second vote was taken for the two nominees with the highest prior votes, Magaldi and Ogawa. The results were as followed: **Magaldi 10 (Bannan, Carreira, Luria, Jones, Awakuni, Godfrey, Asahina, Hidano, Magaldi, Nerney) and Ogawa 5 (Canopin, Young, Ogawa, Spencer, Kurashige). Joe Magaldi was elected chair 10-5-0.**

Vice-Chair – Magaldi nominated Russ Awakuni Nerney seconded. Spencer nominated Al Canopin, seconded by Young. Asahina moved Nerney seconded that nominations be closed. The motion carried unanimously, 15-0-0 to close nominations. A roll call vote was taken with the following results: Russ Awakuni 9 (Bannan, Carreira, Luria, Awakuni, Godfrey, Asahina, Hidano, Magaldi, Nerney); Al Canopin 6 (Canopin, Jones, Young, Ogawa, Spencer, Kurashige). Russ Awakuni was elected Vice-Chair 9-6-0.

Secretary/Treasurer – By acclamation Patt Spencer was elected Secretary.

Board Officers for the 2004-2005 term are: Chair – Joe Magaldi, Vice-Chair – Russ Awakuni, and Secretary/- Patt Spencer.

Ratification of Board Recess (s) – Kurashige moved Ogawa seconded ratifying a Board recess in the month of December. Discussion followed. The motion carried 14-1-0, with Carreira voting no.

Nerney moved, Hidano seconded ratifying a Board recess in the month of August. Discussion followed. The motion carried 10-5-0.

Ratification of Publicity Funds (Videotaping) - This item was deferred.

FIRE, POLICE AND NEIGHBORHOOD SECURITY REPORTS (3 Minutes Each):

Honolulu Fire Department (HFD) – Due to the lengthy discussion on the first agenda item discussed this evening, HFD's was deferred to the next meeting.

Neighborhood Security Watch:

Pauoa – Mason Aiona reported now that summer is here, be aware of more people around the school and park areas and an increase in traffic. Calls are made to HPD when he observes people sleeping in Booth District Park or kids loitering in the neighborhood.

Nu'uanu – Kurashige reported the following: 1) for the month of May in Beats 572 (Pali Highway Kailua Bound) and 573 (Pali Highway, town bound from Kailua) there were 39 unauthorized entries into motor vehicles. Twenty of the unauthorized entries occurred at the Pali Lookout, where car door are left unlocked, locks punched out or windows shattered by thieves. The others are of car break-ins at Blow Hole scenic lookout. 2) Burglaries occurred on Kaohinani Street in the Dowsett area and up into the valley. 3) Graffiti with the name Rodz is along Pali Highway.

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There are two on the Wyllie Street overpass, down School Street to the Liliha area. To report graffiti call HPD or the graffiti hotline. 4) A meeting will be held this Thursday for retiring Chief of Police Lee Donohue at the Kalihi Valley Recreation Center.

Papakolea Community Report– Al Canopin had no report.

Honolulu Police Department (HPD): Due to the lengthy discussion on the first agenda item discussed this evening, the police reports were deferred until the next meeting. The statistics reports from the Honolulu and Kalihi districts were available for interested persons to review.

BOARD OF WATER SUPPLY – Iris Oda was in attendance during the earlier portion of the meeting, but was unable to stay. The monthly report was given to the neighborhood assistant.

CITIZENS' CONCERNS:

T-Mobile Proposed Roof Top Antenna at 275 Auwailimu Street – Karl Aschenbrenner expressed concern regarding installing an antenna on an apartment complex rooftop. At last month's meeting he gave a letter of opposition to the Chair. He requested that this item be placed on the July agenda with the T-Mobile representative giving an updated report on alternate antenna sites in the area. He mentioned that the motion passed by the Board last month recommending denying T-Mobile the Conditional Use Permit, is not acceptable to the neighbors in its present form.

Pelekane Drive – Bruce Coppa asked if sidewalks could be installed and a centerline painted on Pelekane Street. Mayor's representative Magaldi will put in a request with the City. Kurashige responded that requests were put in the last Capital Improvement Project for sidewalks (Waikiki side). She suggested that he ask the Board's Chair and Vice-Chair to push for this item. Secondly, he wanted to know if construction last week at the intersection of Dowsett Avenue and Pelekane Street was legal. He almost encountered a severe accident.

Safety Issue at the Intersect 1 - Prospect Street, Ward Avenue/Intersect 2 - Iolani Avenue, and Alapai Street – Prospect Street resident Carol Kozlouch expressed concern about this dangerous intersection. Visibility is limited and crossing the street is hazardous to one's life. She suggested that a stoplight be installed for safety reasons.

Street Crossing Mechanism – Frank Carlos has suggested a device, which would assist people having to cross Pali Highway. The device would be a flag in a container fastened to a pole at the crosswalk. The person crossing would hold the flag while crossing, and leave it in the container on the opposite side of the crosswalk for others to utilize. His boss is willing to pay to have the devices installed on Pali Highway. The Mayor's representative informed him that both State Department of Transportation and the City (DTS) take care of Pali Highway will follow up.

Hidano mentioned that when the issues regarding the Pali Highway rumble strips occurred, the residents formed a committee. She suggested that he meet with Pat Hironaga who is on the Roadway Safety Improvements Committee for the Pali Highway area.

Candidate – Bob Tom, candidate for District 26 introduced himself.

Tree Trimming at Booth District Park – Mason Aiona said that he is working with Councilmember Rod Tam regarding having trees trimmed on the Namilimili Street side of Booth District Park. He asked if signage could be installed twice weekly between certain hours so the street could be cleaned by the street cleaners.

Identification Theft in Nu'uanu – Paula Kurashige alerted everyone if they find spy ware in their computers to have it immediately removed. She also mentioned that potholes were repaired on Alika and Wood Streets.

38 Prospect Street – Canopin reported that he, Pat Jones, Keoki Miyamoto (DTS) and Raymond Won (DTS) visited the area and found that the owner has installed steel metal stakes to prevent his tenants from parking in the area. The City has issued a notice of violation. A third house has been constructed on the property without the proper permits. There have been complaints for several years; however the owner does not acknowledge this and continues to build. This matter has been referred to the Planning and Permitting Code Enforcement Division for civil fines.

Drying Grass Areas Along Pali Highway – Kurashige expressed concern about grass areas along Pali Highway looking dead and questioned why.

Letter from Institute for Research on Human Happiness Meditation Center to the Community Dated June 8, 2004 – Young expressed concern about two items in the letter. The first was regarding no tourist or non-members would be allowed to train in the facility. She asked is anyone not from our State or City a tourist? Another paragraph in the letter mentions working with a Hawaiian Civic Club to create an exhibit in the reception area to commemorate the history of the building. The letter states that interested viewers would be welcome. She asked if this could be a potential tourist attraction.

UNFINISHED BUSINESS:

Visioning – Dean Asahina reported that the 60-day maintenance period is over for the Pali Highway signage. The plastic netting has been removed and the final inspection will be done in the near future.

Roadway Safety Improvement Committee – This item mentioned earlier during the meeting.

APPROVAL OF THE REGULAR MEETING MINUTES:

MARCH 16, 2004 – Awakuni moved Godfrey seconded to accept the Regular Meeting Minutes of March 16, 2004 as circulated. The motion carried 14-0-1, with Kurashige abstaining.

APRIL 20, 2004 – Awakuni moved, Godfrey seconded to accept the Regular Meeting Minutes of April 20, 2004 as circulated. The motion carried 14-0-1, with Carreira abstaining.

MAY 18, 2004 – The following corrections/additions were made:

- Page 1, under Members Present add "...Paula Kurashige..."
- Page 5, second paragraph add "...Linda Smith questioned Councilmember Tam if he is in favor of the Conditional Use Permit Minor for IRH, but got no response..."
- Page 6, Pacific Heights Coalition adds "...3. Hidano reminded Holm-Kennedy of her reasons for abstaining who acknowledged it..."
- Page 6, Paragraph 3 "...delete unanimously..."
- Citizens' Concerns add IRH "...Hidano asked the timeline for submission of the application to DPP and the consultant explained..." "...A member of the audience said it was moot..." "...Holm-Kennedy asked that this matter (Pacific Heights/IRH) be placed on the June agenda..."

Awakuni moved, seconded by Godfrey to accept the Regular Meeting Minutes of May 18, 2004 as amended. The motion carried 11-0-4, with Carreira, Asahina, Nerney, and Bannan abstaining.

AD HOC COMMITTEE MEETING OF MARCH 30, 2004 – Awakuni moved, Godfrey seconded to accept the Ad Hoc Committee Meeting minutes of March 30, 2004 as circulated. Discussion followed. The motion carried 11-0-4, with Luria, Kurashige, Carreira, and Asahina abstaining.

ELECTED OFFICIALS:

GOVERNOR'S REPRESENTATIVE – Rick Bissen, Jr. distributed Governor Lingle's weekly report and highlighted/added the following:

Follow up: 1) Regarding a concern last month of falling boulders at the end of Booth Road, contact Daniel at the Department of Land and Natural Resources at 586-3837 or Didi Mamiya at 587-0433. 2) Contact Alvin Takeshita at 692-7670 regarding the traffic signal at Nu'uanu Avenue and Beretania Street or Ty Fukumitsu (City Department of

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Transportation Services) at 523-4589. 3) According to Alvin Takeshita, the maintenance of traffic signals on Pali Highway is contracted to the City. 4) The State is responsible for repairing the traffic signals at Laimi Street and Pali Highway. 5) Regarding pig hunting in Pauoa Valley, it comes under the Ala Wai Watershed Project and was permitted by the Department of Land and Natural Resources DLNR). With reference to a homeowner's dog being attacked, it was probably a poacher's dog that made the attack. DLNR requires pig hunters to take a four-hour course and there are multiple agreements that must be met.

Questions, answers and comments: Ogawa reiterated that the concern of drivers illegally turning right on a red light at the intersection of Pauoa Road, Lusitana Street and Kanealii Avenue

MAYOR'S REPRESENTATIVE – Magaldi distributed Brunch on the Beach fliers. All other reports were deferred.

COUNCILMEMBER ROD TAM – Shawn Hamamoto distributed Councilmember Tam's monthly report and was available for questions.

SENATOR SUZANNE CHUN OAKLAND – A representative was not present; however, the monthly report was circulated for interested persons to review.

SENATOR CAROL FUKUNAGA – A representative was not present.

REPRESENTATIVE SYLVIA LUKE – A representative was not present; however, her monthly written report was distributed.

REPRESENTATIVE CORINNE CHING – A representative was not present.

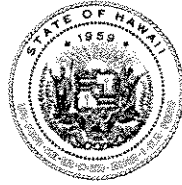
CHAIR'S ANNOUNCEMENTS:

1. The next Board meeting will be on Tuesday, July 20, 2004, Booth District Park at 7:15 p.m.
2. All Board future correspondence will be written by the Board's secretary and put on Board letterhead.
3. No response has been received from the City's Corporation Counsel regarding the letter sent by Luria awaiting their opinion regarding members abstaining. In response to Hidano's questions, there is no required time frame for an answer from Corporation Counsel.
4. Spencer requested that following items be placed on the July agenda under Unfinished business: a) T- Mobile and b) the Pacific Heights Coalition.

ADJOURNMENT – Awakuni moved Nerney seconded to adjourn the meeting. Chair Magaldi adjourned the meeting at 9:23 p.m.

Submitted by,

Nola Frank
Neighborhood Assistant



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

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LESLIE H. KONDO
DIRECTOR

December 5, 2005

VIA E-MAIL: rpoirier@dbedt.hawaii.gov

Mr. Richard G.M. Poirier
Chair, Neighborhood Board NO. 25
530 South King Street
Honolulu, Hawaii 96813

VIA E-MAIL: melissagraffigna@hawaii.rr.com

Ms. Melissa Graffigna
Chair, Neighborhood Board No. 35
530 South King Street
Honolulu, Hawaii 96813

Re: A Community Discussion on the Central O`ahu Sustainable
Communities Plan meeting on Tuesday, December 6, 2005

Dear Mr. Poirier and Ms. Graffigna:

The Honolulu Advertiser reported today that "[t]wo neighborhood boards representing Mililani, Mililani Mauka and surrounding communities are urging residents to attend a discussion on the city's Central O`ahu Sustainable Communities Plan." Rod Ohira, "Mililani residents urged to critique growth plan," Honolulu Advertiser, December 5, 2005, <http://www.honoluluadvertiser.com/apps/pbcs.dll/article?AID=/20051205/NEWS04/512050333/1008/NEWS>.

From the article, it appears that the community meeting will involve discussion of specific development projects that are reflected in the Central O`ahu Sustainable Communities Plan. It also appears that members of the neighborhood boards expect to attend the community discussion, but it is not clear from the article whether the two neighborhood boards involved are treating the community

Mr. Poirier and Ms. Graffigna
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discussion as a joint meeting of their boards under the Sunshine Law, part I of chapter 92, HRS.

OIP therefore writes to caution both neighborhood boards that the Sunshine Law generally prohibits board members from discussing board business (i.e., matters that the board is considering or is reasonably likely to consider in the foreseeable future) outside of a properly noticed meeting. See Haw. Rev. Stat. §§ 92-3 (1993) (meetings required to be open). Section 92-2.5, HRS, permits specific types of interactions between board members, but the only permitted interaction that would appear to apply to the proposed community discussion is section 92-2.5(a), which permits two members to discuss board business as long as no commitment to vote is made or sought. Haw. Rev. Stat. § 92-2.5, as amended by Act 84, 23rd Leg., 2005 Rg. Sess. The Sunshine Law's permitted interactions do not distinguish between a discussion by board members at a public forum such as a community meeting and a private discussion: even if the public is invited to participate in a discussion with board members, if the discussion happens outside a properly noticed meeting and does not fall under one of the permitted interactions it is not permitted under the Sunshine Law. See id.

Thus, if the proposed community discussion will involve discussion of issues that are board business for the neighborhood boards involved, and if the neighborhood boards did not notice the community discussion as a meeting of the boards in the manner provided by section 92-7, HRS, then to avoid violating the Sunshine Law no more than two members of each neighborhood board should attend the community discussion. See OIP Op. Ltr. No. 01-01 at 32-35 (guidelines for neighborhood board members' attendance at Vision Team meetings). As an alternative, if the board members wish to attend the community discussion in greater numbers, the neighborhood boards could re-schedule it so that it could be properly noticed under section 92-7, HRS.

If you have further questions about the Sunshine Law's application to the proposed community discussion or about the Sunshine Law in general, please do not hesitate to call me. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Brooks", with a stylized flourish extending to the right.

Jennifer Z. Brooks
Staff Attorney

JZB: nkb

Cc: Baybee Hufana-Ablan (via e-mail nco@honolulu.gov)



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
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LESLIE H. KONDO
DIRECTOR

December 13, 2005

VIA FACSIMILE NO. 595-2691

Yuri Farrant
2968 Pacific Heights Road
Honolulu, Hawaii 96813

Re: Testimony to Nu`uanu/Punchbowl Neighborhood Board No. 12

Dear Yuri Farrant:

We have received your letter dated November 24, 2005¹ regarding your being denied the opportunity to testify before Neighborhood Board No. 12 (the "Board") at its May 18, 2004 meeting. Accepting the accuracy of the facts as set forth in your letter, we are in agreement with your assessment that the Board wrongfully denied you the opportunity to testify regarding the agenda item listed as Item IV.A.²

By our letter dated August 16, 2005 to the Chair of the Board we advised the Board of its obligation to allow all interested persons to testify on agenda items. Specifically, we quoted the language of section 92-3, Hawaii Revised Statutes, to the Board and advised them that:

[T]he Sunshine Law requires boards to accept all written testimony and to allow all interested persons the opportunity to offer oral testimony regarding any matter on the board's agenda.

¹ Your letter, while dated November 24, 2005, was not postmarked until December 8, 2005 and was not actually received by this office until December 12, 2005.

² Specifically, that agenda item reads: "Conditional use Permit Minor for the Institute for Research in Happiness Meditation Center – Board Action."

Yuri Farrant
December 13, 2005
Page 2

Given our issuance of advice to the Board following the occurrence of the event of which your complaint is based, we do not deem it necessary to issue another letter to the Board restating our advice. We are providing you with a copy of our referenced August 16, 2005 letter to the Board for your reference. We are also providing the Board with a copy of this letter and a copy of your complaint for their files.

Based upon the foregoing circumstances, we are closing our investigation on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Wintehn K.T. Park', written in a cursive style.

Wintehn K.T. Park
Staff Attorney

cc: The Honorable Al Canopin (via e-mail)
The Honorable Baybee Hufana-Ablan (via e-mail)



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GOVERNOR

JAMES R. AIONA, JR.
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LESLIE H. KONDO
DIRECTOR

August 16, 2005

VIA FACSIMILE NO. 527-5760

Mr. Al Canopin, Chair
Nu'uuanu/Punchbowl Neighborhood Board No. 12
c/o Neighborhood Commission
City Hall Room 400
Honolulu, HI 96813

Re: Compliance with the Sunshine Law

Dear Mr. Canopin:

The Office of Information Practices ("OIP") has received a request from Senator Les Ihara, Jr. to review the Agenda that the Nu'uuanu/Punchbowl Neighborhood Board ("Board") has posted for its meeting today to determine whether it conforms with the State's Open Meetings Law, part I of chapter 92, HRS ("Sunshine Law"). More specifically, Senator Ihara has questioned those portions of the Agenda that appear to restrict or deny public testimony. Because the meeting is scheduled for today, we have expedited our review of the Agenda and, based upon that review, offer the following guidance.

Before addressing the specific issues raised by Senator Ihara's request, as a preliminary comment, you should know that the Sunshine Law requires boards to accept all written testimony and allow all interested persons the opportunity to offer oral testimony regarding any matter on the board's agenda.

The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards

shall also afford all interested persons an opportunity to present oral testimony on any agenda item.

Haw. Rev. Stat. § 92-3 (1993) (emphasis added). Based upon the wording of the Agenda, it appears that the Board's intended course of action contravenes this Sunshine Law requirement.

Oral Testimony Must be Allowed on ANY Agenda Item

The Agenda includes, as item 5, a topic entitled "CITIZENS/COMMUNITY CONCERNS." OIP assumes that this agenda item is intended to allow members of the community to raise issues with the Board relating to matters that are not included in the Agenda.¹ The Agenda, however, states that "[w]ith the exception of the Proposed Development in Dowsett Highlands issue, there will be NO other citizens/community concerns discussed at this meeting." (Emphasis in original). From that statement, it appears that the Board does not intend to entertain community concerns relating to matters that are not specifically identified on the Agenda. If that is true, the item should not be included on the Agenda because, as noted above, the public has an absolute right to testify orally on every agenda item. Assuming that OIP's understanding of the Board's intent is correct, OIP suggests that the Board announce that it intends to defer consideration of item 5 to a future meeting.

Moreover, the statement that "there will be NO other citizens/community concerns discussed at this meeting" is also misleading because it appears that the Board intends to allow oral public testimony only with respect to the proposed development and not on other specific matters identified in the Agenda. As noted above, however, the Board must allow oral public testimony on any agenda item. See Haw. Rev. Stat. § 92-3. For example, if a member of the public wishes to offer oral testimony regarding the minutes from the Board's July meeting, i.e., item 6 on the Agenda, the Sunshine Law requires the Board to allow such testimony. Accordingly, the Board cannot conduct its meeting so as to preclude oral public testimony regarding any matter on the Agenda.

Sign-Up to Present Oral Testimony Cannot be Required as a Condition for Presenting Oral Testimony

Under the heading "PROPOSED DEVELOPMENT IN DOWSETT HIGHLANDS," agenda item 8, the Agenda states that "[i]ndividuals desiring to

¹ If members of the community raise issues that are not on the Agenda, the Board may not discuss, deliberate or decide those issues at that meeting unless the Agenda is amended. See Haw. Rev. Stat. § 92-7(d) (Supp. 2004). Generally, if the Board is inclined to consider the issue raised by the community member, the Board must advise the testifier that it will include the matter on its future agenda and will consider the matter as part of that meeting.

make a verbal statement to the Neighborhood Board **are required** to 'sign-in' on the 'Speaker Sign-up Form.'" (Emphasis in the original). While the Board may request that people wishing to testify "sign-in," the Board cannot require people to do so. Such a condition conflicts with the Sunshine Law's requirement that "all interested persons" be given the opportunity to present oral testimony at a board's public meeting. See OIP Op. Ltr. No. 02-02 at 5-6 ("to disallow testimony from anyone who has not signed up by a specific time would be contrary to a basic policy of the Sunshine Law").

For the purposes of tonight's meeting, the Board should announce that it **requests** that persons wishing to testify sign-in (and perhaps will take the testimony in that order) but that it will allow anyone else who wishes to offer oral testimony an opportunity to do so. OIP suggests that, for this meeting and future meetings, the Board ask if there is anybody else wishing to testify once those persons who have signed-in have finished testifying. The statement that "[i]ndividuals desiring to make a verbal statement to the Neighborhood Board **are required** to 'sign-in' on the 'Speaker Sign-up Form'" should not be included in future agendas. If the Board wishes, it can instead indicate that "[i]ndividuals desiring to make a verbal statement to the Neighborhood Board **are requested** to 'sign-in' on the 'Speaker Sign-up Form.'"

Also, for your information, OIP has opined that "boards may not require potential testifiers to identify themselves prior to submitting oral or written testimony and cannot refuse to accept written or oral testimony from a member of the public who chooses not to identify himself or herself." OIP Op. Ltr. No. 04-09 at 3. Thus, while the Board may **ask** persons wishing to present oral testimony to identify themselves, either by signing in or by orally stating their names and associations when they testify, the Sunshine Law does not permit the Board to require such identification as a condition to presenting oral testimony.

No Oral Testimony after 9:13 p.m. May Deprive Persons the Right to Testify

As part of item 8, "PROPOSED DEVELOPMENT IN DOWSETT HIGHLANDS," the Agenda states:

The opportunity for individuals to speak will end **NO LATER THAN 9:13 P.M.**

Individuals not having the opportunity to speak (due to time constraints) are encouraged to submit their written statement to the Board.

As noted above, the Sunshine Law requires boards to allow "all interested persons an opportunity to present oral testimony on any agenda item." Haw. Rev. Stat. § 92-3. OIP interprets this statutory language to require the Board to accept oral testimony on every agenda item from every person so wishing to testify. The Board cannot deny a person of that right to orally testify even if allowing every interested person to testify extends the meeting beyond 9:15 p.m.

Where, because of time constraints or for other reasons, a board cannot hear all of the testimony during the scheduled meeting, the board may continue the meeting to a later date and time to complete its meeting, including receiving the oral testimony from those who have not had their opportunity to do so. See OIP Op. Ltr. No. 02-02 at 6 ("[i]f a board is running short on time, it has the option of continuing a meeting" in accordance with section 92-7(d)); see Haw. Rev. Stat. § 92-7 (d) (Supp. 2004) ("[i]tems of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time). In this way, the Board preserves the public's right to present oral testimony at a public meeting under the Sunshine Law, while also restricting those who previously testified from doing so again. See Haw. Rev. Stat. § 92-3.

OIP also notes that the Board may put reasonable time limits on oral public testimony through a policy adopted by the Board at a meeting. See Haw. Rev. Stat. § 92-3. Absent such a policy, however, the Board cannot impose time limits on oral public testimony.

Board Minutes Must Reflect Views of Participants

On page 3, also under item 8, "PROPOSED DEVELOPMENT IN DOWSETT HIGHLANDS," the Agenda describes:

Statements made by "Other Speakers [sic] will not be printed into the minutes. Only the "names and association" of speakers that made statements to the Board will be printed into the minutes.

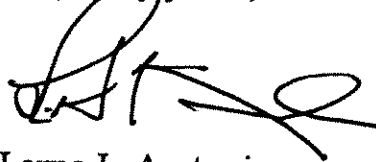
OIP presumes that the "other speakers" referenced in the above statement are those persons identified in the Agenda and those members of the public submitting oral testimony. Assuming that to be true, OIP believes that the Sunshine Law requires the Board to include in its minutes more than the limited information of "names and association" of those speakers. Specifically, with regards to minutes of public meetings, the Sunshine Law requires that "the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants." Haw. Rev. Stat. § 92-9 (1993) (emphasis added). If the minutes reflect only the speakers' names and associations, in OIP's opinion, such minutes would not "give a true reflection of . . . the views of the participants." Id.

Of course, the Sunshine Law does not require the Board to fully incorporate in its minutes the verbatim testimonies presented orally at its public meetings. Haw. Rev. Stat. § 92-9 ("neither a full transcript nor a recording of the meeting is required"). Rather, OIP has previously concluded that "the primary purpose for keeping minutes is to reflect what the board did." OIP Op. Ltr. No. 03-13 at 6. Thus, as OIP had opined, "it is sufficient for the minutes to describe, in very general terms, the positions expressed by" persons who are not board members. Id. Therefore, we advise the Board to remove the restriction on its minutes described in the Agenda and, in the preparation of the minutes, include a brief description that would "give a true reflection of . . . the views of the participants."

By copy of this letter to Baybee Hufana Ablan, OIP is advising her and the Neighborhood Commission of OIP's position with respect to the matters discussed herein. OIP requests that she convey our comments to the Neighborhood Assistants and other staff responsible for preparing the agendas for neighborhood boards. OIP also hereby advises Senator Ihara, by copy of this letter, that OIP is closing our file relating to this matter.

If you or the other recipients of this letter have questions regarding this matter or other issues relating to the Sunshine Law, please do not hesitate to contact OIP.

Very truly yours,


for Lorna L. Aratani
Staff Attorney

cc: The Honorable Senator Les Ihara, Jr. (via facsimile)
Baybee Hufana-Ablan, Executive Secretary
Neighborhood Commission (via facsimile)

5

YURI FARRANT
DIRECTOR OF PHOTOGRAPHY / CAMERAMAN

TO: Office of Information Practices
FROM: Yuri Farrant Yurif@hawaii.rr.com
DATE: November 24, 2005
SUBJECT: Complaint to the Office of Information Practices about the Neighborhood Board

I was present at the meeting of Neighborhood Board NO. 12 (the "Board") on May 18, 2004. I, along with dozens of other members of the public, were there to testify on the agenda item of the Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center. However, the Chairman of the Board, Joe Magaldi, prohibited anyone from testifying on the item other than one spokesman for each side.

There were no two sides of the issue. There was no spokesman representing me or the many other members of the public who were prohibited from speaking. I and all the other members of the public in attendance who wanted to speak were denied their rights under HRS section 92-3 to testify on the agenda item.

Regards,



Yuri Farrant

2968 PACIFIC HEIGHTS RD. HONOLULU, HAWAII 96813
PHONE AND FAX (808) 595-2691



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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LESLIE H. KONDO
DIRECTOR

December 28, 2005

VIA E-MAIL

nco@honolulu.gov

Mr. Edward E. Gall

Mr. Roy Wickramaratna

Re: Ad Hoc Working Group

Dear Messrs. Gall and Wickramaratna:

By letter dated December 21, 2005, you requested an opinion concerning a meeting of an Ad Hoc Working Group. Specifically, you ask whether, under the Sunshine Law, the Ad Hoc Working Group could have convened a meeting where two members of the Ad Hoc Working Group did not receive notice of the meeting.

From your letter, we understand that the Neighborhood Plan Committee of the Neighborhood Commission formed the Ad Hoc Working Group to review and comment on the proposed Revised Neighborhood Plan. We also understand that the Ad Hoc Working Group is comprised of more than 35 persons who have consistently participated in the Neighborhood Plan Committee's meetings; that none of those persons are members of the Neighborhood Commission; and that the Ad Hoc Working Group filed its meeting notice and agenda with the City Clerk's office more than six calendar days before the meeting.

You further advise that the notice and agenda were not included in the packet provided to two members of the Ad Hoc Working Group and that, on the day of the meeting, they insisted that, because they had not received the notice and agenda, the Ad Hoc Working Group's meeting would violate the Sunshine Law. The Ad Hoc Working Group cancelled its meeting.

Mr. Edward E. Gall
Mr. Roy Wickramaratna
December 28, 2005
Page 2

For the purpose of this letter, we assume that the Ad Hoc Working Group is a “board,” as defined by section 92-2(1), HRS.¹ The Sunshine Law requires that a board’s notice and agenda be filed with the City Clerk’s office and in the board’s office at least six calendar days in advance of the meeting. Haw. Rev. Stat. § 92-7(b) (Supp. 2004). The statute also requires that a copy of the notice and agenda be mailed to any person who requests notification of meetings. Haw. Rev. Stat. § 92-7(e) (Supp. 2004). There is no Sunshine Law requirement concerning when notice of meetings must be provided to board members.

Therefore, if the two people had requested notification of the Ad Hoc Working Group’s meetings, notice should have been mailed to them at the same time that the notice was filed with the City Clerk’s office. Id. If they had not requested such notice, the fact that two members of the Ad Hoc Working Group did not receive copies of the board’s meeting notice and agenda, in our opinion, did not violate the Sunshine Law. In other words, based upon the assumptions stated above, if the Ad Hoc Working Group had convened its meeting on December 10, it does not appear that the meeting would have been in violation of the Sunshine Law. But see Haw. Rev. Stat. § 92-15 (1993) (“due notice shall have been given to all members of the board”).² We, however, caution you that our opinion stated herein is based upon the information that you provided and upon numerous assumptions. Our opinion may change if additional facts material to our analysis are brought to our attention.

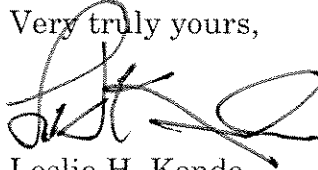
¹ We note that, based upon the very limited information contained in your letter, the Ad Hoc Working Group may not be a “board” for purposes of the Sunshine Law, in which case the Ad Hoc Working Group is not constrained by the statute’s requirements. If the Ad Hoc Working Group is not a “board” under section 92-2(1), HRS, because, as we understand, you are the only two members of the Neighborhood Plan Committee, you cannot discuss business of your committee with each other outside of a Neighborhood Plan Committee meeting, including during the Ad Hoc Working Group’s meetings. For that reason, only one of you, at most, should participate in the Ad Hoc Working Group.

² Section 92-15, HRS, is outside of our jurisdiction. We recommend that you consult with the Department of the Corporation Counsel regarding whether the issue raised in your letter violated section 92-15, HRS, or any other provision.

Mr. Edward E. Gall
Mr. Roy Wickramaratna
December 28, 2005
Page 3

We trust that the above responds to your request. If you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to be 'LH Kondo', written over a horizontal line.

Leslie H. Kondo
Director

LHK:cy

cc: All Neighborhood Commission members (via email nco@honolulu.gov)
The Honorable Baybee Hufana-Ablan (via email nco@honolulu.gov)
Ms. Michelle Kidani (via email nco@honolulu.gov)
Mr. Elwin Spray (via email nco@honolulu.gov)



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LESLIE H. KONDO
DIRECTOR

January 20, 2006

VIA FACSIMILE NO: 531-2415

Michael A. Lilly, Esq.
Ning, Lilly & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

VIA E-MAIL: noc@honolulu.gov

Mr. Al Canopin, Chair
Nu`uanu/Punchbowl Neighborhood Board No. 12
c/o Neighborhood Commission
530 South King Street, Room 400
Honolulu, Hawaii 96813

Re: Request for Opinion (S RFO-P 05-024)

Dear Messrs Lilly and Canopin:

The Office of Information Practices ("OIP") received an inquiry from Mr. Michael A. Lilly as to whether the Nu`uanu/Punchbowl Neighborhood Board No. 12 violated the Sunshine Law by refusing to allow members of the public to present oral testimony on the agenda item of the Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center at the Board's meeting held May 18, 2004.

Mr. Lilly alleges that the Board's then-chair, Mr. Joseph Magaldi, announced that one person would be allowed to speak for each of the "two sides" of the agenda item, and only for five minutes. According to Mr. Lilly, many people in the audience objected to this announcement and expressed a desire to speak individually.

The minutes for the May 18 meeting, which Mr. Lilly provided to OIP, confirm that Chair Magaldi announced that “one spokesperson from each side would have five minutes to speak on this issue.” The minutes further state that “[r]epresentatives from both sides agree.” However, Mr. Lilly states that there was no such agreement, nor was he in any way designated as a representative for what the minutes refer to as the “Pacific Heights Coalition,” presumably the other members of the public who wished to speak to the issue.

Mr. Al Canopin, the Board’s Chair, declined the opportunity to submit the Board’s position regarding these allegations to OIP.

OIP received a letter supporting Mr. Lilly’s account of what happened from Mr. Gayle Chestnut. Mr. Chestnut stated that he never agreed to represent anyone but himself, and that he expressly told the Board that he was not representing anyone but himself. Mr. Chestnut also wrote that many audience members “expressed outrage” at the Board’s refusal to allow them to testify.

Mr. Lilly’s version of events is further supported by a Honolulu Star Bulletin article reporting as to that agenda item that “[n]early everyone in the crowd signed up to speak, but board Chairman Joe Magaldi called for one spokesman from each side, saying the board has heard all the arguments at three earlier meetings. He and other board members were heckled by the noisy crowd. . . .” Mary Adamski, Prayer for a Solution, Honolulu Star Bulletin, May 22, 2004, <http://starbulletin.com/2004/05/22/features/story1.html>.

Mr. Lilly’s account of what happened is partly supported by the minutes and is wholly supported by another individual who was present as well as a newspaper account of the meeting. Further, the Board has not contested Mr. Lilly’s account. Thus, OIP concludes that Mr. Lilly’s account is accurate and that the Board did deny numerous members of the public the opportunity to testify on an agenda item at its May 18 meeting.

The Sunshine Law clearly requires a Board to “afford all interested persons an opportunity to present oral testimony on any agenda item.” Haw. Rev. Stat. § 92-3 (1993). This the Board failed to do. To the contrary, the Board denied many interested persons the opportunity to testify on the Conditional Use Permit Minor for the Institute for Research in Human Happiness Meditation Center at the Board’s meeting held May 18, 2004.


A member of the public may go to court within ninety days to void a board action taken in violation of the Sunshine Law. Haw. Rev. Stat. § 92-11 (supp. 2005). Because of the length of time that has passed since this meeting, though, that remedy is no longer available.

OIP cautions the Board that it must "afford all interested persons an opportunity to present oral testimony on any agenda item." The Sunshine Law is very clear on this point and the Board must understand that it cannot legally limit the number of people allowed to testify on an agenda item. In other words, the Board cannot refuse any person who wishes to testify on an agenda item, including those who do not "sign in" or "pre-register" to testify, the opportunity to do so. Moreover, unless the Board has adopted a rule or policy which imposes a reasonable time limit on the length of each person's oral testimony, the Board cannot compel a testifier to limit the length of his or her testimony.

The Board should be aware that a willful violation of the Sunshine Law is a misdemeanor and thus may result in criminal prosecution up to two years after the violation occurred. Haw. Rev. Stat. §§ 92-13 and -701-108 (1993 and supp. 2005). Conviction for a misdemeanor may result in a fine of up to \$2,000 or imprisonment for up to a year or both. Haw. Rev. Stat. §§ 706-640 and -663 (1993 and supp. 2005). A board member convicted for violation of the Sunshine Law may also be removed from the Board. Haw. Rev. Stat. § 92-13 (1993).

OIP will close its file on this investigation request with this letter. If you have further questions about this matter or the Sunshine Law in general, please do not hesitate to call OIP.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

JZB: nkb

Cc: Baybee Hufana-Ablan (via e-mail)
Gayle B. Chestnut (via facsimile)